

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-7037

B

P/S

United States Court of Appeals

For the Second Circuit.

AUDREY WEINER, AS ADMINISTRATRIX OF THE
ESTATE OF JULIE A. WEINER, Deceased,
Plaintiff-Appellant-Appellee,

-v-

BARBARA WEINER, LOUIS B. WEINER, BARRY STONE,
JANE STONE, GREYHOUND BUS LINES, INC., and
RONALD BROWN,
Defendants-Appellees-Appellants.

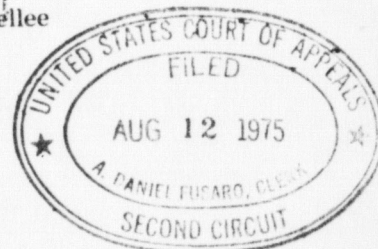
*Appeal from the United States District Court
for the Eastern District of New York*

Appellant's Appendix

VOLUME I—Pages 1-368

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DOCKET ENTRIES

1

Alan Vance Weiner et al v Barbara Weiner et al

<u>Date</u>	<u>Filings-Proceedings</u>
9/3/71	Complaint filed. Summons issued.
9/24/71	By Mishler, Ch.J.-Order directing that service of S/C may be made pursuant to CPLR filed.
9-27-71	Summons returned and filed. Grayhound Bus Lines srvd 9-21-71; Ronald Brown srvd on 9-14-71.
10-5-71	ANSWER of defts GREYHOUND LINES, INC., & RONALD BROWN filed with JURY DEMAND.
10-26-71	JURY DEMAND FILED.
11-3-71	ANSWER OF defts Barry Stone & Jane Stone filed.
1-3-72	Affidavit of service of summons and complaint. srvd through Secty of State on 10-7-71 filed.
1-13-72	ANSWER of defts Barbara Weiner & Louis B. Weiner with JURY DEMAND filed, and INTERROGATORIES.
1-16-72	Before Mishler, Ch.J.-Case called-Marked ready for trial.
6/29/72	Pltffs' Notice to take defts' deposition filed.
7/10/72	Defts. cross-notice to take the deposition on 8-3-72 filed.
10/4/72	By Mishler, ChJ-Order dtd 10/2/72 substituting attys for defts STONE filed.
11/30/72	Pltff's note of issue filed.
3-1-74	Before MISHLER, CH.J.-Case called to set trial date. Pltff to serve and file answers to interrogatories b 3-18-74. 6-17-74 for trial. 6-7-74 at 2 P.M. for pre-trial conference.
3/7/74	Before MISHLER, CH.J.-Case called-Pre-trial conference held and concluded.
6-17-74	Before MISHLER, CH.J.-Case called. No appearance Adjd without date.
6-28-74	Before MISHLER, CH.J.-Case called-Sept 23, 1974 for trial
9/23/74	Before DOOLING, J.-Case called- Parties stipulate that the action is dismissed as to deft Brown-M. Spatt, atty for pltffs moves that the case Alan Weiner be allowed in this court under the doctrine of pendant jurisdiction - Motion denied - Trial ordered and begun-
	Trial cont'd to Sept. 25, 1974
9/23/74	Pltff's request to charge filed.
9/23/74	Answers to Interrogatories demanded by defts B. Weiner and Louis Weiner filed
9/23/74	Pltff's request as to jury voir dire filed.

1

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED EMOLUMENT RETURNED
		PLAINTIFF	DEFENDANT	
8-25-74	Before DOOLING, J.--Case called. Trial resumed. Juror #11 absent & excused. Alt. juror #1 now juror #11. Alt. juror #2 now alt. juror #1. Trial cont'd to 9-27-74.			
9/27/74	Before DOOLING, J.--Case called. Trial resumed. Trial cont'd to Oct. 1, 1974.			
9/29/74	Before DOOLING, J.--Case called. Trial resumed. Trial cont'd to Oct. 1, 1974.			
10/1/74	Before DOOLING, J.--Case called. Trial resumed. Plaintiff rests. Plaintiff's withdrawal of the complaint of action for pain, and suffering-motion granted. Plaintiff moves to dismiss the wrong- ful death action. Motion granted. Plaintiff Stone by Dr. Cameron move for a verdict dismissing the action as to themselves (Stone)-Motion granted. Plaintiff moves to dismiss action against Grayhound-Ground-motion granted. Plaintiff moves to discontinue as to deft Louis B. Weiner-motion granted subject-Deft Weiner rests-Trial cont'd to Oct. 2, 1974.			
10-2-74	Before DOOLING, J. - Case called. Trial resumed. Juror Jose Villafane excused. Deft & plttf summation. Jury retires to deliberate. Marshals sworn. Trial continued to 10-3-74.			
10-3-74	By DOOLING, J. - Two orders of sustenance filed.			18/19
10-3-74	Before DOOLING, J. - Case called. Trial resumed. Jury deliber- ation resumed. The jury returns with a verdict in favor of the deft. Jury polled. Jury discharged. Trial concluded. Plttf moves to set aside the verdict. Plttf to file motion papers within 10 days.			
10-3-74	By DOOLING, J. - Order of sustenance dtd 10-3-74 filed.			20
10-11-74	Notice of motion to set aside the verdict and for a new trial ret 10-28-74 at 10 A.M. filed.			21
10-15-74	Stenographer's transcript dated Oct. 2, 1974 filed.			22
10/17/74	Answering Affidavit of Samuel Levitt filed.			23
10/20/74	Answering Affidavit of Stanley W. Zawacki filed.			24
11/8/74	Supplemental Affidavit of Stanley W. Zawacki filed.			25
11-6-74	Before DOOLING, J.-Case called. Motion to set aside verdict for new trial argued. Decision reserved.			
12/20/74	By DOOLING, J.- Order dated 12/20/74 filed that the motion of the plttf to set aside the verdict and to grant plttf a new trial is denied in all respects and the motion to set aside the dismissal of the complaint at the close of the			

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
AUDREY WEINER, as Administratrix
of the estate of JULIE A. WEINER, :
deceased, :

Plaintiff, :

71 C 1177

-against- :

BARBARA WEINER, LOUIS B. WEINER,
BARRY STONE, JANE STONE and :
GREYHOUND LINES, INC., :

Defendants. :

-----X

Appearances:

ARTHUR D. SPATT, Esq. (Messrs. Spatt, Bauman
& Wilkins of Counsel) for plaintiff.

STANLEY W. ZAWACKI, Esq. (Messrs. REILLY &
REILLY of Counsel) for defendant Weiner.

SAMUEL LEVITT, Esq. (Messrs. SCHWARTZ, LEVITT,
SOMMER & BLITZ of Counsel) for defendant
Greyhound.

DOOLING, D. J.

Plaintiff moves to set aside the verdict rendered
on October 3, 1974, and for a new trial on the grounds that
the verdict was contrary to law and against the weight
of the credible evidence, that portions of the charge were
materially erroneous, that admitting evidence that defend-
ant Barbara Weiner would share in the recovery for her

infant daughter's death was erroneous and prejudicial, and that certain questions and remarks by defense counsel during trial and in summation were so prejudicial as to require a fresh trial; in addition, plaintiff moves to set aside as erroneous the Court's dismissal of the complaint as against the defendant Greyhound at the close of the plaintiff's case, arguing that it was additionally prejudicial to dismiss since it denied to the jury the opportunity to give the plaintiff satisfaction for the alleged wrong to the deceased child without finding that it was the negligence of the child's mother that caused the child's death.

While the motion must be denied in all respects, it raises again an acutely troublesome and hopelessly unsatisfactory situation brought about by the apparently settled rule that in wrongful death cases arising out of intra-family tort, the fact that a beneficiary, or the sole beneficiary of any wrongful death recovery is the defendant whose negligence caused the death does not bar a recovery. In the present case the defendant Barbara Weiner, the operator of the family motor vehicle at the time of the accident, and her husband who was riding in the car with

her were interested to the exclusion of anyone else in any recovery against Barbara Weiner for negligently causing her daughter's death. See otation, 1964, 95 A.L.R. 2d 585, 596 et seq; Rozewski v. Rozewski, Monroe Co. 1944, 181 Misc. 793, 46 N.Y.S. 2d 743; cf. Jenks v. Veeder Contracting Co., 3d Dept. 1942, 264 App.Div. 979, 37 N.Y.S. 2d 230; LoGalbo v. LoGalbo, Oneida Co., 1930, 138 Misc. 485, 246 N.Y.Supp. 565; Rischer v. Owens, Nassau Co. 1957, 8 Misc. 2d 1036, 171 N.Y.S.2d 463. The state cases have relied heavily on McKay v. Syracuse R.T.R.Co., 1913, 208 N.Y. 359, which, however, was a case in which a husband's recovery for the defendant's negligent killing of his wife was found not to be barred under the wrongful death statute even though the husband's negligence contributed to his wife's death. The more recent cases of Rischer v. Owens, supra, and Matter of Minetti, N.Y.Co., 1971, 65 Misc. 2d 1011, 319 N.Y.S. 2d 56, explicitly treat Rozewski as continuing to be the law.

Moral repugnance to "a person's profiting by his own wrong" is thought to be answered by the legislature's manifest knowledge of the elimination of older principles governing intra-family tort and its failure to restrict

recovery under the statute. A difficulty remains. In the case in which the wrongdoer is the sole beneficiary of a wrongful death action, the rational objection to the case, all other things aside, is that it would be a null action, an absolute futility. There are, of course, intra-family tort cases, in which the action can result in a significant transfer of funds. For example, where the action is brought nominally on behalf of the beneficiaries of a deceased child against one of two parents who, together, would have a totality of the interests in the recovery, the case could result in a significant transfer of funds from husband to wife (or vice versa) if that chanced to be, in a particular case, an aim worth pursuing for some socially recognizable reason. Still, so far as the action necessarily assumed a recovery by the wrongdoer against the wrongdoer, it would be a nullity, self-cancelling conduct that could not be given practical or legal vitality by using the apparatus of appointing someone other than the parents as administratrix or administrator for the purposes of suit. The difficulty stems from the failure openly to recognize such cases as - generally - actions against the indemnity company to make it pay an appropriate award for a covered

risk that eventuated. It is not useful to speak of the cause of action as a statutory creation nor to insist that the legislative act cannot be penetrated to examine its operation. Perhaps this whole subject ought to be re-examined in the light of Moragne v. State Marine Lines, 1970, 398 U.S. 375. At minimum, the tolerance of such litigation in its present form creates for counsel all but impossible problems, and these must be returned to in considering the last of the points raised by plaintiff, the impropriety of the closing argument of defense counsel.

Plaintiff's basic argument is that on the evidence the jury could not in reason have found that the defendant driver was without fault. The contrary is the case. The accident in one sense was completely unexplained and all but inexplicable. The occupants of the Weiner car, if their evidence is credited, were denied the capacity to testify because, in Mrs. Weiner's case, she was rendered insensible and deprived of recollection of the accident by its impact, her husband, in his testimony, was asleep, and the young son of the family, riding in the back seat with his now deceased sister was not watching and could not in

any case recall the events leading up to the accident. Road conditions were such as to dictate cautious driving; and the evidence was that both the bus with which the Weiner car collided and the Weiner car were traveling well below the speed limit. No evidence required a conclusion of negligent driving: the jury no doubt speculated over the possibility that Mrs. Weiner had fallen asleep while driving, but no evidence supported that inference, and for the jury to have treated it as an available inference, and to have found negligence on that basis would have been sheer speculation. The driver of the following car could say only that, as he saw it, the Weiner car moved right, got into the piled-up snow and slush on the right side of the road, and then struck across the road into the very path of the bus and unavoidably collided with it. That is all the evidence that there was. The bus driver could testify only to the sudden moving of the Weiner car into the path of his bus from the other side of the two lane highway.

Plainly the jury could have found that the Weiner car was negligently driven per force of the decisions in New York to that effect. Pfaffenbach v. White Plains Express Corp., 1966, 17 N.Y.2d 132; Coury v. Safe Auto

Sales Inc., 1973, 32 N.Y.2d 162; Stafford v. Mussers
Potato Chips, Inc., 4th Dept. 1972, 39 App.Div.2d 831,
333 N.Y.S. 2d 139. But these cases hold only that such a
case as the present one must be submitted to the jury.
They do not say, as plaintiff really now insists, that
the plaintiff is entitled to prevail in every case in which
a defendant vehicle has crossed the road into the path of
an approaching vehicle. If that were so, plaintiff would
be entitled to a directed verdict rather than to a new
trial, for the case was fairly submitted to the jury in the
light of these three decisions and after full discussion
and review of the charge with counsel for all parties.*

Plaintiff complains of two errors in the charge,
the first in the failure to charge that in a death action
the plaintiff is not held to as high a degree of proof as
is an injured plaintiff who can describe the accident.
That charge is almost always given in death actions in New
York, but it can hardly in reason be applied to such a
case as the present one in which the decedent was a child
riding in the rear seat of one vehicle, and the bus driver,
the operator and the passenger in the following vehicle and

three persons riding in the Weiner car, including the driver, survived the accident, were available to testify and did testify. The deceased child was playing a game with her brother at the time of the accident in the back seat, and, it may be inferred, was in no better position to describe the accident than was her surviving brother. The conventional charge is not derived from a statutory rule but is a practical charge element evoked by the particular circumstances of particular cases. It would have been simply irrational to have charged it in the present case.

The second alleged error in the charge was the failure to strike from the conventional definition of negligence the requirement that the defendant's negligence must be found by the jury to have created a reasonably foreseeable risk of bodily harm to persons in plaintiff's situation. Not only was the request to delete this element from the charge made at much too late a date (for the charge had been in plaintiff's hands for several days before it was delivered), but the charge was given in plaintiff's hearing in exactly the words contained in the written charge earlier submitted to counsel, and it was later explained to the jury in counsel's presence in response to the jury's

question about its application to the deceased child. Only after all that did plaintiff belatedly suggest that it had no place in the case. The suggestion was not acceptable at that point and indeed is not acceptable in legal principle. Defendant could not be liable unless her negligence was negligence toward her deceased daughter. That may seem obvious as a foreseeable element in any negligent driving where a passenger sues, but it remains nevertheless, an integral element in the concept of negligence. Here, again, plaintiff in essence claims that there should have been a direction that as a matter of law the jury were required to find, if they found that the operator was negligent, that her negligent operation was negligence toward her daughter. The idea is a tempting one on the particular facts, but the proposition is invalid. Courts must be careful not to invade the province of the jury simply because in particular instances the application of this basic component in the concept of negligence may seem to the court perfectly clear. The whole concept of negligence is rife with complexities and it is these that the jury must resolve without being given dissected elements of negligence to pass on as if they constituted the whole

concept.

Plaintiff contends that the jury should have been told, at plaintiff's request, that the estate (or administratrix) had an absolute right to commence the action against the mother of the decedent-infant. The request was declined. The whole case and the entire charge assumed that the plaintiff had the right to be in court. To have charged the jury in any language even nearly approaching the requested language would have been so overwhelmingly prejudicial to the defendant that it was unthinkable. The court is not wont in such a case as this or in any other case to charge the jury that a plaintiff has an absolute right to sue however manifestly true that is from the court's entertaining the action and its survival until the moment at which the case is ready for submission to the jury. Again plaintiff is simply reiterating its own contention that there was something peculiarly right about the action's being commenced, although that is very far from being clear.

Plaintiff contends that it was error to dismiss the action against the defendant Greyhound. There was not a

scintilla of evidence against the defendant Greyhound. The evidence was that the Greyhound bus was being driven on its own side of the road and that it was not being driven at an excessive rate of speed. The evidence is that the entire accident happened in a time so very brief, measured from the first instant at which the Weiner car deviated from a normal path until the moment of impact, that the Greyhound driver was powerless to do anything except, it seems, to bear somewhat to the right as he applied his brakes. There is every indication in the evidence, and nothing to the contrary, to suggest that he did manage both to slow the bus somewhat and to bear somewhat to the right before the impact, and that he was able to do so much is indeed remarkable. The evidence did have in it the usual triumphs of the lawyer over the layman - in which the driver was made to appear to espouse the preposterous proposition that when he was eight hundred feet away from the point of impact he could see that the Weiner car was in trouble. That part of the driver's signed report and of his testimony was so manifestly a result of merely semantic confusion that it does not merit

consideration. The Weiner car travelled - from the first moment it was in trouble to the point of impact - 104 feet, more or less, at about 40 miles an hour (about 58 feet a second). Obviously the bus driver could not by any species of foresight have seen the accident developing at a distance of 800 feet unless his motor vehicle was going eight times as fast as the Weiner vehicle or about 320 miles an hour. The bus driver's estimate was, again, that he saw the Weiner car in danger when it was 225 to 250 feet away. That testimony, when it is compared with the 104 foot distance actually measured on the ground from the point where the Weiner car first deviated from normal-drive-path to point of impact, amounts to confirming that the bus was about that same distance from the point of impact. The evidence discloses nothing that could support a finding of negligent driving on the bus driver's part, and does not indicate that any escape path was open to him.

The final and most insistent point is, of course, plaintiff's point that it was unfair of defense counsel to present in any way to the jury the strange idea that the plaintiff administratrix was actually suing for the benefit

of the defendant and her husband and not at all for her own benefit, and that the defendant wife and mother would, if there was a recovery by the plaintiff administratrix, be the beneficiary of one-half of the recovery. The defendant operator was inevitably and necessarily a witness in the case. Consequently her interest in the case and its outcome was a proper subject for presentation to the jury, and defendant, or rather her counsel of record, in the absurdity of this sort of case, was the one whose "case" would benefit by his showing that his "client's" interest, the defendant's interest, was in the plaintiff's recovery, since the defendant would be entitled to 50% of the plaintiff's recovery and would not bear the burden of any judgment in the plaintiff's favor. Absurdity was hardly excluded by the jury's inevitable realization that the balance of the recovery would go to the plaintiff's husband and that there was something exotic about the case. To say that the case presented to counsel on both sides every problem that could arise from the essential absurdity of the situation understates the realities. In a forthright action by the Weiners against the indemnity insurance

company to recover the pecuniary loss the parents suffered by reason of their daughter's death as a consequence of the wife's alleged negligence in driving, the jury would and could have evaluated the testimony of the Weiners in the light of their interest in recovering against the insurance company, and that company could forthrightly have defended itself. The jury could then have weighed the credibility of the Weiners' testimony that they could not recall the incident, and consider the reason, if any, why the Weiners had not produced the hospital and medical records which might have demonstrated that Mrs. Weiner had an observed amnesia. When that point came up during trial ample time remained to get the hospital and medical records but that was not done. Plaintiff elected instead to rest on the testimony of the Weiners (who were plaintiff's witnesses) that, in Mrs. Weiner's case, she suffered a traumatic retrospective amnesia and that, in Mr. Weiner's case, he was unwell and asleep when the accident occurred.

Defense counsel was cautioned not to argue or suggest to the jury that the parents of the child could not sue, or that their own negligence precluded them from

recovering, or that the suit invited a "travesty of justice." Defendant's counsel did, permissibly, argue the defendant's interest in the recovery. (But he did transgress the instruction in spirit if not literally, in effect asking the jury to agree with him that they would not themselves have been callous and immoral enough to seek a money recovery for a deceased child of their own by contending that their own negligence had encompassed the child's death. It can be said only that, literally, he did not argue to the jury that they ought not to return a verdict for the plaintiff administratrix because they would not themselves have sued had they been in the same position since they doubtless shared his view of the humanity and morality of the situation.)

However, no motion for a mistrial was made, and the plaintiff, who summed up after the defendant, dealt, on the whole, as effectively with the matter as was possible. The issue which the improper remarks of defense counsel brought to the surface was ineludably in the case, and, as defendant argues, was implicit in plaintiff's own elaboration of the issue of damages. The improper remarks

could not materially worsen the situation and they were more than counter-balanced by plaintiff's skillful summation. The jury considered the case with evident care and its inquiry did not disclose any emotional bias. The case contained evidence strongly favorable to recovery in the affecting testimony about the deceased child, her character, her exceptional abilities and her hold on the affections of her family, her brother particularly, and her schoolmates. These are additional factors that give assurance that the impropriety in the language of the defense summation was without effect.

The case underlines the fact that the time is long past when personal injury cases should continue to be tried without the jury's being in open possession of the facts respecting liability insurance; it may be assumed that they or many of them realize that insurance must be in back of the litigation, particularly when it is litigation within a close-knit family unit. Not only does trying the case in the absurd form in which the present case had to be tried belie the realities, but it puts counsel on both sides in false positions. The insurance

company in such an intra-family case should be in court and honestly represented by counsel protecting its interests. Under the policy it is, basically, required to furnish counsel to defend the insured against charges of fault. It certainly does not contract to facilitate the insured's recovery against himself or herself where the proponent of the issue of the insured's fault, the true "plaintiff," is the "defendant" insured, and not the plaintiff administratrix, who has no beneficial interest in the suit. Plaintiff's counsel - really representing the pecuniary interest of the nominal defendant - should not be subjected to the necessity of suing the person who is in substance his client, and forcing upon insurance company counsel the self-contradictory role of representing as a defendant a person who is in economic fact a plaintiff.

The dilemma is, in part, of the indemnity insurer's making. Perhaps for good reasons, since such companies are closely regulated in this state, the companies shrink from making a direct issue with their insureds on the question of their liability to their own insureds for the insureds' negligence. But must not the companies face the

issue directly, deny liability, and invite direct suit in cases in which their investigation genuinely affords them good reason to question their liability to their own insureds, and in which they would contest rather than settle if the issue were their insured's liability to a third and wholly stranger-party? And in a case such as the present one, if their investigation led them genuinely and in good faith to question their liability to the deceased child's parents, who were their insureds, it is not apparent that an appropriate course would not have been to deny liability, to decline to assume responsibility for the "defense" of a case brought to seek a recovery on behalf of (and not really against) the named defendants, and, if need be, to seek to be added as a party defendant to defend in the company's own name and right.

Obviously this issue was not free from doubt. However, in the circumstances of the present case, no fair ground for setting the verdict aside appears, and the motion is accordingly denied.

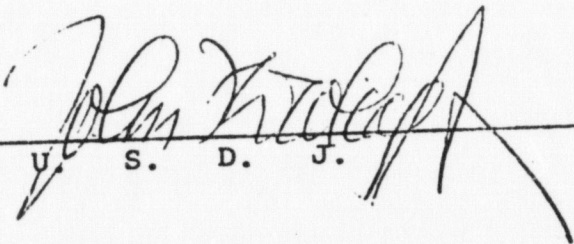
Accordingly, it is

ORDERED that the motion of the plaintiff to set

aside the verdict and to grant plaintiff a new trial is denied in all respects and the motion to set aside the dismissal of the complaint at the close of the plaintiff's case as against the defendant Greyhound Lines, Inc. is in all respects denied.

Brooklyn, New York

December 20, 1974.


U. S. D. J.

Footnote: The part of the charge involved was in the following language:

Where a statute directly imposes a specific driving rule, failure to conform to that rule is negligence.

There is evidence that a double yellow line divided the two lanes of highway 149 at the point where the accident occurred. A double yellow line under State Regulations is a "full barrier" marking, signifying that vehicles proceeding in either direction along the highway may not drive on the left side of the double yellow line. Vehicle and Traffic Law § 1126(a), in force at the time of accident and today,

provides that

"... no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings."

If you find that there was such a double yellow line and that Mrs. Weiner drove her car to the left of the double yellow line, you must find that she was negligent in operating the Weiner car.

However, failure to drive to the right of the double yellow line may be justified or excused by emergency or other unusual circumstances. It is for you to say in all the circumstances and on all the evidence whether defendant drove her car across the double yellow line, or whether at the time her vehicle crossed the double yellow line it had gone out of control and could not be prevented from crossing the lines.

If you conclude that there was not a violation of the statute in all the circumstances, you must nevertheless review all the evidence, and circumstances apart from that particular driving rule, and determine from that review whether defendant was or was not negligent.

The fact that the Weiner car crossed the centerline into the path of the bus, if you find that to be the fact, is evidence from which you may find that defendant was negligent. Similarly, the fact that the Weiner car left the roadway on the right and struck a snow bank or guard ~~XXXXX~~ rail, if you find that to be the fact, is evidence from which you may find that defendant was negligent. However, neither fact, standing alone, nor both, standing alone, requires you to find that defendant was negligent. In reaching your final conclusion on negligence you take into account all the evidence bearing on that issue.

COMPLAINT
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT

-----x
ALAN VANCE WEINER, an infant by his guardian
ad litem, AUDREY WEINER, and AUDREY WEINER,
as Administratrix of the estate of JULIE A.
WEINER, deceased,

Plaintiffs,

- against -

BARBARA WEINER, LOUIS B. WEINER, BARRY
STONE, JANE STONE, GREYHOUND BUS LINES,
INC., and RONALD BROWN,

Defendants.

COMPLAINT
Civil Action
File #

-----x
Plaintiffs, complaining of the defendants, by
their attorneys, SPATT & BAUMAN, ESQs. respectfully show
to this court and allege:

FIRST: That this court has jurisdiction of
the cause under the provisions of 28 United States Code,
Section 1332.

SECOND: That at all the times hereinafter men-
tioned, plaintiff AUDREY WEINER was a resident of 2719
East 28th Street, Brooklyn, County of Kings, City and
State of New York.

THIRD: That at all the times hereinafter
mentioned, defendants BARBARA WEINER and LOUIS WEINER were
residents of the Town of Parsippany, State of New Jersey.

FOURTH: That at all the times hereinafter
mentioned, defendants BARRY LEE STONE and JANE STONE

were residents of Burlington, Vermont.

FIFTH: That at all the times hereinafter mentioned defendant RONALD BROWN was a resident of Geneva, New York.

SIXTH: That at all the times hereinafter mentioned, defendant GREYHOUND BUS LINES was a foreign corporation having been incorporated in the State of Delaware.

SEVENTH: That at all the times hereinafter mentioned, defendant GREYHOUND BUS LINES, INC. (hereinafter referred to as GREYHOUND) was licensed to do business in the State of New York.

EIGHTH: That on August 3, 1971 plaintiff AUDREY WEINER was appointed as administratrix of the Estate of JULIE A. WEINER by an order of the Surrogate of the County of Morris, State of New Jersey.

NINTH: That at all the times hereinafter mentioned, defendant LOUIS B. WEINER was the owner of a 1964 Imperial bearing New York State Registration Plate #MYR300 for the year 1971.

TENTH: That at all the times hereinafter mentioned, the said vehicle was being operated by defendant BARBARA WEINER.

ELEVENTH: That at all the times hereinafter mentioned, defendant GREYHOUND was the owner of a 1967

MC1 bus bearing Vehicle Identification No. 7063 registered in New York State in 1971.

TWELFTH: That at all the times hereinafter mentioned, the said vehicle owned by defendant GREYHOUND was being operated by defendant RONALD BROWNE with the permission and consent of said defendant GREYHOUND.

THIRTEENTH: That at all the times hereinafter mentioned, the said defendant RONALD BROWNE was operating the said bus owned by defendant GREYHOUND while in the scope of his employment.

FOURTEENTH: That at all the times hereinafter mentioned, the defendant JANE or BARRY STONE were the owner or owners of a 1969 Volkswagen Sedan bearing Plate No. S3733 registered in the State of Vermont for the year 1971.

FIFTEENTH: That the said vehicle owned by defendant JANE or BARRY STONE was being operated by defendant BARRY STONE with the permission and consent of the owner of the said vehicle.

SIXTEENTH: That at all the times hereinafter mentioned, Route 149 near its intersection with Ox Bow Hill in the Town of Queensbury, County of Warren, State of New York, was a public highway.

SEVENTEENTH: That at all the times hereinafter

mentioned, the infant ALAN VANCE WEINER and deceased JULIE A. WEINER were passengers in the said vehicle owned and operated by defendants LOUIS B. WEINER and BARBARA WEINER as aforesaid.

EIGHTEENTH: That on March 7, 1971 at approximately 5:20 P.M. at the said place set forth herein above, there occurred a collision of the three vehicles set forth above causing injuries to plaintiffs herein.

NINETEENTH: That the said accident and the injuries to plaintiffs herein resulting therefrom were caused solely by the negligence of the defendants and each of them and without any negligence on the part of the plaintiffs herein contributing thereto.

TWENTIETH: That upon information and belief, defendants were negligent in that the said vehicles were in contact with each other; were operated without keeping the same under proper and reasonable control and at excessive speeds under the circumstances and that the said vehicles had failed to apply brakes and braking equipment in a timely and proper manner so as to avoid the accident and in otherwise operating the said vehicles in a negligent and careless manner.

TWENTY-FIRST: That as a result of the foregoing infant ALAN VANCE WEINER was rendered seriously injured and disabled; was hospitalized, was seriously and permanently injured, all with accompanying pain has had and will

29

require medical treatment and has been unable to attend to his usual pursuits.

TWENTY-SECOND: That as a result of the foregoing, infant ALAN VANCE WEINER by his guardian ad litem AUDREY WEINER has been damaged in the sum of ONE HUNDRED AND FIFTY THOUSAND (\$150,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF INFANT ALAN VANCE WEINER:

TWENTY-THIRD: That as a result of the foregoing injuries to said infant, various medical, hospital, and other expenses were incurred in the cure and treatment of the said infant, all to this plaintiff's damage in the sum of TEN THOUSAND (\$10,000.00) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF PLAINTIFF AUDREY WEINER AS ADMINISTRATRIX OF THE ESTATE OF JULIE A. WEINER, DECEASED:

TWENTY-FOURTH: That by reason of the aforesaid accident, JULIE A. WEINER, deceased, was rendered seriously injured; suffered conscious pain and suffering, had and did require medical treatment, all resulting in her death.

TWENTY-FIFTH: That as a result of the aforesaid plaintiff AUDREY WEINER as administratrix of the estate of JULIE WEINER was damaged in the sum of ONE HUNDRED AND FIFTY THOUSAND (\$150,000.00) DOLLARS.

AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF AUDREY WEINER AS ADMINIST RATRIX OF THE ESTATE OF JULIE A. WEINER, DECEASED:

TWENTY-SIXTH: That as a result of the foregoing the infant JULIE A. WEINER, then ten (10) years of age, died on March 12, 1971.

TWENTY-SEVENTH: That the said deceased left her surviving the following next of kin: BARBARA WEINER, mother, LOUIS B. WEINER, father.

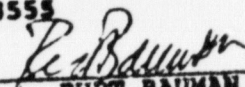
TWENTY-EIGHTH: That as a result of the foregoing, the said next-of-kin and the estate of the said JULIE A. WEINER have suffered damages, medical and funeral expenses for treatment and burial expenses, and have lost present and future contributions and services of the said deceased. That as a result of the foregoing, the said estate and next-of-kin of the said deceased have been damaged in the sum of ONE HUNDRED AND FIFTY THOUSAND (\$150,000.00) DOLLARS.

WHEREFORE, plaintiff demands judgment against the defendants on the First Cause of Action in the sum of ONE HUNDRED AND FIFTY THOUSAND (\$150,000.00) DOLLARS, on the Second Cause of Action in the sum of TEN THOUSAND (\$10,000.00) DOLLARS, on the Third Cause of Action in the sum of ONE HUNDRED AND FIFTY THOUSAND (\$150,000.00) DOLLARS, and on the Fourth Cause of Action in the sum of ONE HUNDRED AND FIFTY THOUSAND (\$150,000.00) DOLLARS, all together with the costs and disbursements of this action.

(VERIFIED BY BERT
BAUMAN AUGUST 27,
1971)

SPATT & BAUMAN
Attorneys for Plaintiffs
Office & P.O. Address
225 Madison Avenue
New York City, N.Y. 10001
565-3555

BY:


BERT BAUMAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ALAN VANCE WEINER, an infant by his
guardian ad litem, AUDREY WEINER, and
AUDREY WEINER, as Administratrix of
the Estate of JULIE A. WEINER,
Deceased

Plaintiffs,

-against-

A N S W E R71 Civ.1177

BARBARA WEINER, LOUIS B. WEINER,
BARRY STONE, JANE STONE, GREYHOUND
BUS LINES, INC. and RONALD BROWN,

Defendants

-----x

The defendants, BARRY STONE and JANE STONE, appear-
ing by their attorneys, BOAL, McQUADE & FITZPATRICK, allege
on information and belief as follows:

FIRST: They deny knowledge or information sufficient
to form a belief as to the allegations in Paragraphs
SECOND, THIRD, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH,
ELEVENTH, TWELFTH, THIRTEENTH and SEVENTEENTH of the
complaint contained.

SECOND: They deny each and every allegation in Para-
graph NINETEENTH of the complaint contained, except they
admit and allege that the negligence of the defendants
BARBARA WEINER and LOUIS B. WEINER caused or contributed as
cause to the accident and to the injuries sustained by the
plaintiffs.

THIRD: They deny each and every allegation in Paragraph TWENTIETH of the complaint contained, except they admit and allege that the defendants BARBARA WEINER and LOUIS E. WEINER did not keep their car under proper control, were operating at an excessive rate of speed and that they failed to apply brakes and braking equipment in a timely and proper manner so as to avoid the accident, and otherwise operating their vehicle in a negligent and careless manner.

FOURTH: They deny knowledge or information sufficient to form a belief as to the allegations in Paragraph TWENTY-FIRST of the complaint contained.

FIFTH: They deny each and every allegation in Paragraph TWENTY-SECOND of the complaint contained.

AS TO THE SECOND CAUSE OF ACTION

SIXTH: They deny each and every allegation in Paragraph TWENTY-THIRD of the complaint contained.

AS TO THE THIRD CAUSE OF ACTION

SEVENTH: They deny each and every allegation in Paragraph TWENTY-FOURTH of the complaint contained, except that they admit that Julie A. Weiner did die as a result of the accident.

EIGHTH: They deny each and every allegation in Paragraph TWENTY-FIFTH of the complaint contained.

AS TO THE FOURTH CAUSE OF ACTION

NINTH: They deny knowledge or information sufficient

to form a belief as to the allegations in Paragraph TWENTY-SEVENTH of the complaint contained.

TENTH: They deny each and every allegation in Paragraph TWENTY-EIGHTH of the complaint contained.

WHEREFORE, the defendants JANE STONE and BARRY STONE demand judgment dismissing all the causes of action as against them.

BOAL, McQUADE & FITZPATRICK

By _____
Member of the firm
Office & Post Office Address
116 John Street
New York, N.Y. 10038
Attorneys for Defendants JANE STONE
and BARRY STONE

ANSWER OF DEFT. GREYHOUND

HCS:8
D-2057UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT

ALAN VANCE WEINER, an infant by his
guardian ad litem, AUDREY WEINER, and
AUDREY WEINER, as Administratrix of
the estate of JULIE A. WEINER, deceased,

Plaintiffs,

-against-

BARBARA WEINER, LOUIS B. WEINER,
BARRY STONE, JANE STONE, GREYHOUND
BUS LINES, INC., and RONALD BROWN,

Defendants.

ANSWER
CIVIL ACTION
FILE #71 C 1177
Defendants Grey-
hound Lines, Inc.
sued herein as
GREYHOUND BUS
LINE, INC. and
RONALD BROWN, de-
mand trial by
Jury.

Defendants Greyhound Lines, Inc.,

sued herein as Greyhound Bus Lines, Inc., and Ronald Brown,
answering the complaint, allege upon information and belief,
as follows:

1. Allege that they have no knowledge
or information sufficient to form a belief as to the truth
of the allegations contained in paragraphs "First", "Second",
"Third", "Fourth", "Eighth", "Ninth", "Tenth", "Fourteenth",
"Fifteenth", "Seventeenth", of plaintiffs complaint.

1(a) Admit the allegations contained in
paragraphs "Fifth", "Eleventh", "Twelfth", "Thirteenth",
and "Sixteenth" of plaintiffs complaint.

2. Deny the allegations contained in
paragraph numbered "Sixth" and "Seventh" of plaintiffs com-
plaint, except admit that the defendant Greyhound Lines, Inc.,
sued herein as Greyhound Bus Lines, Inc., was a foreign cor-
poration authorized to do business in the State of New York.

3. Deny the allegations contained in
paragraph numbered "Eighteenth" except admits that a vehicle
ran into and collided with the motor vehicle bus owned by
the defendant Greyhound Lines, Inc., and operated by the
defendant Ronald Brown on the date and place set forth in
the complaint.

4. Deny the allegations contained in paragraphs numbered "Nineteenth", "Twentieth" and "Twenty-Second" of plaintiffs complaint.

5. Deny the allegations contained in paragraph numbered "Twenty-First" of plaintiffs complaint except allege that it has no knowledge or information sufficient to form a belief as to the truth of the allegations relating to the injuries, disabilities, hospitalizations and manifestations thereof.

As to the Second Cause of Action
on Behalf of Infant Alan Vase
Weiner:

6. Deny the allegations contained in paragraph numbered "Twenty-Third", except allege that they have no knowledge or information sufficient to form a belief as to the allegations contained therein relating to injuries and medical and hospital care and treatments.

As to the Third Cause of Action
on Behalf of plaintiff Audrey
Weiner as Administratrix of the
estate of Julie A. Weiner, de-
ceased:

7. Deny the allegations contained in paragraphs numbered "Twenty-Fourth" and "Twenty-Fifth" of plaintiffs complaint.

As to the Fourth Cause of Action
on Behalf of Audrey Weiner as
Administratrix of the estate of
Julie A. Weiner, deceased:

8. Allege that they have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "Twenty-Sixth" and "Twenty-Seventh" of plaintiffs complaint.

9. Deny the allegations contained in paragraph numbered "Twenty-Eighth" of plaintiffs complaint, except allege that they have no knowledge or information sufficient to form a belief as to the truth of the allegations relating to special damages past, present and future as set forth therein.

As and for an affirmative defense on behalf of defendants Greyhound Lines, Inc., sued herein as Greyhound Bus Lines, Inc., and Ronald Brown, said defendants allege upon information and belief:

10. That any injuries and damages which the infant Alan Vance Weiner may have sustained and damages sustained by reason of the injuries and death of Julie A. Weiner, at the time and place mentioned in the complaint herein, were due to and arose out of their own carelessness and negligence or the carelessness, negligence or want of care on the part of the co-defendants or other persons for whose acts or omissions these defendants are not responsible.

WHEREFORE the defendants Greyhound Lines, Inc., sued herein as Greyhound Bus Lines, Inc., and the defendant Ronald Brown, demand judgment that the complaint be dismissed with costs to these defendants as against the plaintiffs and that the Court grant to the defendants such other, further and different relief as the justice of the cause may require.

SCHWARTZ, LEVITT & SOMMER

By _____
a member of the firm
Attorneys for defendants
Greyhound Lines, Inc. sued herein
as Greyhound Bus Lines, Inc.,
and Ronald Brown,
50 Court Street
Brooklyn, New York 11201

TO: SPATT & BAUMAN

MA 4-2859

ANSWER OF DEFTS. BARBARA WEINER AND LOUIS B. WEINER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT

----- x

ALAN VANCE WEINER, an infant by
his guardian ad litem, AUDREY
WEINER, and AUDREY WEINER
as Administratrix of the estate
of JULIE A. WEINER, deceased,

Plaintiffs,

-against-

BARBARA WEINER, LOUIS B. WEINER,
BARRY STONE, JANE STONE,
GREYHOUND BUS LINES, INC., and
RONALD BROWN,

Defendants.

71 C. 1177

DEFENDANTS BARBARA
WEINER and LOUIS B.
WEINER DEMAND A JURY
TRIAL.

----- x

Defendants, BARBARA WEINER and LOUIS
B. WEINER, by REILLY & REILLY, their attorneys, answering
the complaint herein, respectfully show to this Court,
and allege:

FIRST: Deny any knowledge or
information sufficient to form a belief as to each and
every allegation contained in paragraphs numbered "FIRST",
"SECOND", "FOURTH", "FIFTH", "SIXTH", "SEVENTH", "EIGHTH",
"ELEVENTH", "TWELFTH", "THIRTEENTH", "FOURTEENTH", "FIFTEENTH",
of said complaint.

SECOND: Admit each and every
allegation contained in paragraphs numbered "THIRD",
"NINTH", "TENTH", "SIXTEENTH", "SEVENTEENTH", of said
complaint.

THIRD: Deny each and every
allegation contained in paragraph numbered "EIGHTEENTH",
of said complaint, except admit that on March 7th, 1971

at approximately 5:20 P.M. at the said place set forth in the complaint, there occurred a collision of the three vehicles.

FOURTH: Deny each and every allegation contained in paragraph numbered "NINETEENTH", of said complaint, insofar as they pertain to said defendants.

FIFTH: Deny each and every allegation contained in paragraphs numbered "TWENTIETH", "TWENTY-FIRST", and "TWENTY-SECOND", of said complaint.

ANSWERING A SECOND CAUSE OF ACTION ON BEHALF OF INFANT ALAN VANCE WEINER:

SIXTH: Deny each and every allegation contained in paragraphs numbered "TWENTY-THIRD", of said complaint.

ANSWERING A THIRD CAUSE OF ACTION ON BEHALF OF PLAINTIFF AUDREY WEINER AS ADMINISTRATRIX OF THE ESTATE OF JULIE A. WEINER, DECEASED.:

SEVENTH: Deny each and every allegation contained in paragraphs numbered TWENTY-FOURTH and "TWENTY-FIFTH", of said complaint.

ANSWERING A FOURTH CAUSE OF ACTION ON BEHALF OF AUDREY WEINER AS ADMINISTRATRIX OF THE ESTATE OF JULIE A. WEINER, DECEASED.:

EIGHTH: Admit each and every allegation contained in paragraph numbered "TWENTY-SEVENTH", of said complaint.

NINTH: Deny each and every allegation contained in paragraph numbered ^{"TWENTY-SIXTH"} ~~"TWENTY-~~ EIGHTH", of said complaint.

AS A FIRST, SEPARATE AND DISTINCT
DEFENSE TO THE ALLEGED CAUSES OF
ACTION:

TENTH: Defendants allege that the injuries and death complained of in the complaint, at the time and place, or on the occasion mentioned therein, were caused in whole or in part, or were contributed to by the negligence and want of care on the part of the plaintiffs, and not by any negligence or fault or want of care on the part of defendants Barbara Weiner and Louis B. Weiner.

WHEREFORE, defendants, BARBARA WEINER AND LOUIS B. WEINER, demand judgment against plaintiffs, dismissing the complaint herein, together with the costs and disbursements of this action.

Dated, New York, January 10th, 1972.

REILLY & REILLY

By: _____

ELSIE M. REILLY
Attorneys for defendants
Barbara Weiner and Louis B.
Weiner,
Office & P.O. Address,
233 Broadway,
Borough of Manhattan,
City of New York.

ANSWERS TO INTERROGATORIES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALAN VANCE WEINER, an infant
by his guardian ad litem,
AUDREY WEINER, and AUDREY
WEINER as Administratrix of
the estate of JULIE A. WEINER,
deceased,

Plaintiff,

-against-

BARBARA WEINER, LOUIS B. WEINER,
BARRY STONE, JANE STONE, GREYHOUND
BUS LINES, INC., and RONALD BROWN,

Defendants.

ANSWERS TO INTER-
ROGATORIES DEMANDED
BY DEFENDANTS
BARBARA WEINER AND
LOUIS B. WEINER

S I R S :

PLEASE TAKE NOTICE, that pursuant to Rule 33
of the Rules of Civil Procedure for the District Court
of the United States, plaintiff AUDREY WEINER makes the
following answers to the interrogatories propounded by
defendants BARBARA WEINER and LOUIS B. WEINER as follows:

1. March 7, 1971 at approximately 5:15 P. M.
2. On Route 149 at approximately 150 feet west
of Ox Bow Hill, Town of Queensbury, New York.
3. Upon information and belief, and as claimed
by defendants BARRY STONE and RONALD M. BROWN, BARBARA
WEINER was negligent in the operation of the said vehicle

in causing the same to go into the opposing lanes of traffic; in losing control; in operating the said vehicle at an excessive speed under all of the circumstances prevailing; in failing to keep a proper lookout and in failing to take all remedial action to avoid the collision; in failing to apply brakes and braking equipment in a timely and proper manner; and in otherwise being negligent in the operation of the said vehicle.

4. All violations of law, rules or regulations are reserved to the Court.

5. Infant ALAN VANCE WEINER sustained the following injuries:

Massive cerebral concussion and contusion; left hemiparesis; contusion of the left hemisphere with bilateral diffuse cerebral contusions; infant comatose on admission; unconsciousness for a protracted period of time followed by a semi-comatose condition for several days; placed on the critical list; severe increase in intracranial pressure; injury to the brain and its component parts; positive EEG; definite Babinski with other neurological tests positive; contusion of the left parietal skull with abrasion and edema of the left parietal skull; right carotid angiography performed; severe right pupil ptosis with droop of the right eyelid

and facial weakness.

Severe post-concussion syndrome with irritability; headaches and dizziness; inability to concentrate; forgetfulness; persistent drooping of the right eyelid; loss of balance;

Severe emotional reaction to death of sister with post-traumatic personality and neurotic reaction; nervousness anxiety and acute depression.

Parasitic infection contracted in the hospital with diagnosis of enterolius vermicularis intestinal parasitic infection, appropriately treated.

6. Upon information and belief, the above injuries to the head, brain and personality changes, together with their symptoms, sequelae and residuals are all permanent.

5. Deceased JULIE A. WEINER sustained the following injuries:

Severe mid brain contusion and hemorrhage; traumatic shock; skull fracture of the left frontal skull; severe laceration of the scalp; cerebral concussion; cerebral laceration; multiple fractures of the anterior chest wall.

The above injuries resulted in the death of said infant on March 12, 1971 at approximately 2:50 P. M.

7 and 8. Infant ALAN WEINER was confined to the Glens Falls Hospital on March 7, 1971 and was transferred that day to the Albany Medical Center Hospital from March 7, 1971 through March 27, 1971. Said infant was thereafter confined to bed and home for a period of approximately two and a half months.

9. Glens Falls Hospital and Albany Medical Center Hospital on behalf of infant ALAN WEINER; Glens Falls Hospital on behalf of deceased JULIE WEINER.

10. 11. 12. 13. and 14. Neither infant ALAN WEINER nor deceased JULIE WEINER were employed at the time of the occurrence.

15. Special damages on behalf of infant ALAN WEINER:

Hospital expenses, Glens Falls Hospital, \$213.70.

Albany Medical Center Hospital, \$2,682.80.

Physicians services and medical supplies, approximately \$550.00.

Special damages on behalf of deceased JULIE WEINER:

Glens Falls Hospital, \$1,350.40.

Physicians services, approximately \$330.00.

Funeral expenses, funeral chapel, \$1,027.00.

Stone, approximately \$500.00.

16. 2719 East 28th Street, Brooklyn, New York.

17. LOUIS B. WEINER was born on April 28, 1941; BARBARA WEINER was born on June 11, 1943.

18. Infant ALAN WEINER was born on June 18, 1961; deceased JULIE WEINER was born on May 3, 1960.

19. Yes.

20. The participants thereof, all parties in this lawsuit.

21. Unknown, other than the participants.

23. No.

25. No.

26. No.

Dated: New York, New York
April 27, 1974

Yours, etc.

(VERIFIED BY AUDREY
WEINER JUNE 17, 1974

SPATT, BAUMAN & WILKINS, ESQS.
Attorneys for Plaintiff
225 West 34th St.
New York, N. Y. 10001

INTERROGATORIES ADDRESSED TO PLAINTIFF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
ALAN VANCE WEINER, an infant
by his guardian ad litem,
AUDREY WEINER, and AUDREY
WEINER as Administratrix of
the estate of JULIE A. WEINER,
deceased,

Plaintiff,

-against-

BARBARA WEINER, LOUIS B. WEINER,
BARRY STONE, JANE STONE, GREYHOUND
BUS LINES, INC., and RONALD BROWN,

Defendants.

----- x
INTERROGATORIES ADDRESSED TO
THE PLAINTIFF.

S I R S:

PLEASE TAKE NOTICE, that you are
herewith required under Rule 33 of the Rules of Civil
Procedure for the District Court of the United States
to serve upon the undersigned, within fifteen days
after the service of this notice, answers in writing,
and under oath, to the following interrogatories:

1. State the date and time of day
of the occurrence.
2. State the exact location of
the occurrence.
3. State all the facts and/or
omissions constituting the negligence claimed.
4. State any and all laws, rules,
regulations and ordinances that are claimed to be
either applicable to the occurrence or that have been
violated by the defendants Weiner.
5. State nature and extent of all
injuries claimed.
6. Specify those claimed to be

permanent.

confined to bed.

confined to home.

7. Accurately state length of time

8. Accurately state length of time

9. State name of each and every

hospital, clinic or institution where any treatment or examination was rendered and length of time, if any, confined there.

10. State nature of employment and hours of work.

11. Name and address of employer at the time of the accident, and at the present time, if there be any change.

12. Length of time incapacitated from employment.

13. If self-employed, nature of self-employment and business address.

14. State total amounts claimed as loss of earnings, including detailed statement as to how such lost earnings were computed.

15. Total and exact amounts claimed as special damages for:

- a. Physician's services.
- b. Medical expenses
- c. Nurse's expenses
- d. Hospital expenses.
- e. Funeral expenses.
- f. Any other items of special damage or pecuniary loss claimed to have been sustained by decedent or next of kin.

16. State the residence address of the plaintiffs.

17. State the names, relationship and dates of birth of next of kin.

18. State the date of birth of the infant plaintiffs.

19. Does the plaintiff, or any of her representatives, claim there were any persons who have any knowledge of any of the facts or circumstances surrounding this accident?

20. If the answer to the preceding interrogatory is in the affirmative, then state the name and address of each and every such person, and state the substance of the knowledge each has.

21. Does the plaintiff, or any of her representatives claim that there were any persons who witnessed the accident?

22. If the answer to the preceding interrogatory is in the affirmative, state the name and address of each and every person whom the plaintiff or her representative claims witnessed this accident.

23. Has the plaintiff, or any of her representatives, conducted an investigation of this accident?

24. If the answer to the preceding interrogatory is in the affirmative, then state the following:

- a). The name and address of each and every person who conducted said investigation.
- b). Relationship of each such person or persons to the plaintiff or her attorneys.
- c). The date or dates when said investigation was conducted.

- d). The name^{and address} of each and every person who was interviewed and the date of such interview, and who conducted such interview.
- e). The name and address of each and every person who gave a statement, the date that statement was given, and whether such statement was signed.

25. Has the plaintiff, or any of her representatives on her behalf, obtained any photographs concerning this accident, the site of the accident, or the manner of its occurrence?

26. If the answer to the preceding interrogatory is in the affirmative, then state the following:

- a). The number of photographs and what each purports to describe.
- b). The name and address of the photographer or photographers who took said photographs.
- c). The date when each of said photographs was taken.

26. Has the plaintiff, or any of her representatives on her behalf, obtained any surveys of the location of the accident?

27. If the answer to the preceding interrogatory is in the affirmative, then state the following:

- a). The name and address of the person who prepared the survey.
- b). The date said survey was prepared.

Dated, New York, January 10th, 1972.

Yours, &c.,

REILLY & REILLY

By: _____
Elsie M. Reilly

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----
4 ALAN VANCE WEINER

5 -v-

71-C-1177

6 BARBARA WEINER
7 -----

8
9 United States Court House
Brooklyn, New York

10 September 27, 1974
11 10 o'clock A.M.

12
13
14
15 B e f o r e :

16 HONORABLE JUDGE JOHN F. DOOLING, JR., U.S.D.J.
and a Jury

18
19
20
21 IRA RUBINSTEIN
22 ACTING OFFICIAL COURT REPORTER
23
24
25

(MORNING SESSION, SEPTEMBER 27, 1974, WEINER
VERSUS WEINER, BEFORE JUDGE DOOLING AND A JURY.)

(Whereupon, the jury enters the courtroom
at 9:45 A.M. and the following proceedings were had:)

THE COURT: All right.

MR. SPATT: If it pleases the Court, I
would like to call Sargent George Stannard to the
stand.

THE COURT: Come on up, Mr. Stannard.

GEORGE STANNARD, having been first duly sworn,
was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. SPATT:

Q Sargent Stannard, would you keep your voice
up, maybe that microphone is on.

THE COURT: It ought to be on. Want to
try that out?

THE WITNESS: Yes, it is on.

(BY MR. SPATT)

Q Sargent, have you been subpoenaed by my
office to come to Court early this week?

A Yes, I have.

Q And were you subpoenaed by any other lawyers
in this case?

1 A Yes, I was.

2 Q Would you tell us who else subpoenaed you
3 to come to Court.

4 A Mr. Ledman.

5 MR. LEVITT: Levitt.

6 (BY MR. SPATT)

7 Q Is that the lawyer for Greyhound Bus if you
8 know?

9 THE COURT: If he knows, the jury knows
10 that. All right, move along.

11 (BY MR. SPATT)

12 Q Pursuant to that subpoena, did you come
13 to Court, I think it was on Wednesday, Sargent?

14 A Yes, I did.

15 Q Did you discuss the case with me at that
16 time?

17 A Yes, I did.

18 Q Did I agree to pay you and compensate you
19 for your expenses for coming to Court both on Wednesday and
20 today?

21 A Yes, you did.

22 Q What is your occupation, Sargent?

23 A I am a policeman.

24 Q And what is your present occupation?

25 A I am a Sargent, Town of Queensbury Police

52

1 Department.

2 Q How long have you been on the Police Depart-
3 ment of the Town of Queensbury?

4 A Approximately five years.

5 Q And on March the 7, 1971, were you similiarly
6 occupied?

7 A Yes, I was.

8 Q Were you a Police Officer or Sargent at that
9 time?

10 A I was a Patrolman.

11 Q Referring to an accident which occurred on
12 March 7, 1971, on Route 149, did you investigate that acci-
13 dent, Sargent?

14 A Yes, I did.

15 Q Do you have any personal recollection of the
16 facts of the accident that you investigated?

17 A Yes, I do.

18 Q Will you tell the Court and jury about
19 Route 149; are you familiar with that road?

20 A Sir?

21 Q Is that a two-way road, Sargent?

22 A Yes it is.

23 Q In which direction does it run?

24 A Runs basically east and west.

25 Q And would west be toward New York further

1 and east be back toward the Vermont area?

2 A Yes Sir.

3 Q Now in the area of this accident, was the
4 terrain on Route 149 level?

5 A No, it was not.

6 Q Well, could you describe whether--what it
7 was if it wasn't level.

8 A At the point of the accident or road itself?

9 A Well, let's say approaching the point of
10 the accident from both ways, east and west, Sargent.

11 A There is a large hill.

12 Q In which way, going west toward the City,
13 that's the way the bus was going, or going east towards
14 Vermont where the two cars were coming from?

15 A Both, there is a hill in the middle.

16 Q And would the hill converge sort of in the
17 bottom, roughly about where the accident occurred?

18 A Roughly, yes.

19 Q Now, in the area where the accident occurred,
20 was the road straight, meaning without any curves or was it
21 curved?

22 A There was a slight buffer before.

23 Q Now going east toward Vermont, the way the
24 line of the Weiner car was going as you later found out; is
25 that correct?

1 A Yes.

2 Q That way would there be a curve for the
3 Weiner car coming around or a curve to the right?

4 A Curve to the left.

5 Q Would that curve be a sharp curve, a moderate
6 curve, a gradual curve; would you describe that curve to us.

7 A Gradual curve.

8 Q Then likewise for the bus driving west to-
9 ward New York, further, that would be a gradual curve to the
10 right, to his right; is that right?

11 A Yes.

12 Q And Sargent, what was the speed limit on
13 that road at the time of the accident?

14 A State speed limit, about 55.

15 THE COURT: About 55.

16 (BY MR. SPATT)

17 Q When you say "State speed limit," was there
18 any signs posted on the road anytime from the Northway --
19 withdraw that.

20 How would you get on Route 149 if you came
21 up from the New York area, through the New York State Thruway
22 and through the Northway. Where would you get on to 149?

23 A At the green Atlanticville.

24 Q Direct from the Northway?

25 A No, separation of about a mile and a half.

1 Q Get off the roadway, another road, then on
2 149?

3 A Route 9.

4 Q Route 9 is the intermediary road between
5 149 and--

6 A Yes Sir.

7 Q Once a car got on 149 going east towards
8 Vermont, were there any posted signs for speed limit?

9 A Not that I can remember, no.

10 Q Now so that a car going east on 149 would
11 not see visibly a speed limit notice of any kind or warning
12 or sign of any kind?

13 A On certain curves there are speed limit
14 signs, but not at this point.

15 Q But at this point in this curve, were there
16 any signs to the speed limit?

17 A Not that I can remember.

18 Q So the driver going east towards Vermont
19 would have no knowledge other than state law of the speed
20 limit; is that correct?

21 A Yes Sir.

22 Q Now let's take it going west from an area
23 where the bus was coming from like Killington Vermont, was
24 the place where they left, but they would get on Route 149;
25 where, in that direction?

1 A In the Village of Fordham.

2 Q Village of Fordham. How many miles or
3 distance was that away from where the accident occurred?

4 A Approximately eight miles.

5 Q Now would there be--was there any, to your
6 knowledge, any posted speed limits on that stretch of road
7 for the eight miles the bus would have been going west on
8 Route 149?

9 A Not to my knowledge.

10 Q So there again it would be a knowledge of
11 State law, but no other warnings with respect to the
12 vehicular traffic speed of it, anyway?

13 A That's right.

14 Q Now Sargent, this road 149 where the accident
15 occurred; Did it have a shoulder on the road?

16 A Yes, it did.

17 Q And now, around the slight curve where the
18 accident occurred, was there any partition barrier or device
19 on the right-hand side of the road for each driver approaching
20 that curve?

21 A Yes, there is guard rails.

22 THE COURT: What, Sir?

23 THE WITNESS: Guard rails.

24 (BY MR. SPATT)

25 Q Now this guard rail, let's take it going

1 east or towards Vermont with the Weiner and Stone car, how
2 far from the end of the roadway was the guard rail?

3 A Approximately four and a half feet.

4 Q I see.

5 THE COURT: That's four and a half feet
6 from the end of the lane or from the end of the
7 shoulder?

8 THE WITNESS: From the shoulder itself.

9 THE COURT: From the outer edge?

10 THE WITNESS: No. The outer edge of the
11 road.

12 THE COURT: The outer edge of the paved
13 lane roadway proper?

14 THE WITNESS: Right.

15 (BY MR. SPATT)

16 Q So that from the--As his Honor said, from
17 the end of the paved portion there is a four and a half foot
18 --would you call that a shoulder?

19 A Some of it, yes.

20 Q Then after that four and a half feet, there
21 is a guard rail, correct?

22 A Yes, Sir.

23 Q What does this guard rail look like,
24 Sargent?

25 A Three cables strung through the posts.

1 Q I would be correct in saying that on the
2 opposite side of the road going west as the bus was going,
3 to his right, did he have the same shoulder of four and a
4 half feet than the guard rail to his right?

5 A Yes.

6 Q About how wide would you say these rails
7 were drawn--was there one lane each way, Sargent, for
8 vehicular traffic?

9 A Yes.

10 Q In other words it wasn't a multi-lane highway,
11 one lane each way?

12 A Right.

13 Q How wide would you say each lane was?

14 A 10 feet, approximately.

15 Q And was there anything dividing the center
16 of Route 149?

17 A A double yellow line.

18 Q A what?

19 A Double yellow line.

20 THE COURT: Double.

21 (BY MR. SPATT)

22 Q By the way, do you know what double yellow
23 line means in traffic regulations?

24 A Yes Sir.

25 Q What does it mean?

1 A It means you stay to your right.

2 Q Now, Officer, I am going to show you two
3 photographs--withdraw that.

4 When you said that the speed limit was 55
5 miles an hour, were there anything in the regulations with
6 regard to whether the speed limit was 55 under all weather
7 conditions or do you know anything about that?

8 A 55 miles an hour for excellent conditions.

9 Q And if conditions were not excellent, is
10 there anything that you know about the speed limit? I don't
11 know if you do or not. Being less than 55 miles, is there
12 such a thing?

13 A Not exactly. There is a section in the
14 vehicular traffic law which has imprudent speed for conditions.

15 Q What?

16 A Imprudent.

17 Q No miles an hour or something?

18 A Nothing like that in vehicular Law.

19 Q At the time of this accident, approximately
20 where were you, Sargent?

21 THE COURT: How far away. Where and how
22 far off.

23 A Approximately two, three miles.

24 Q What happened, did you get a call to come
25 to the scene of an accident?

1 A Yes, I did.

2 Q Did you go to the scene of this accident?

3 A Yes, I did.

4 Q As best as you are able to discover or
5 approximate, how long after the actual accident did you get
6 to the scene?

7 A Under the conditions at the time, probably
8 10 minutes, 15 minutes, 10 minutes.

9 Q Say 10, 15 minutes, Officer, Sargent?

10 A Approximately, yes.

11 Q And you got a radio call, did you?

12 A Yes.

13 Q When you got to the scene of the accident,
14 how many vehicles did you see that were involved in this
15 accident?

16 A When I first arrived, just two.

17 Q And what two were they, Sargent?

18 A The Weiner vehicle and the Greyhound Bus.

19 Q Did you go to the Weiner vehicle?

20 A Yes, I did.

21 Q Will you tell the Court and the jury what
22 you saw at that time.

23 A I saw two people identified later as Mr. &
24 Mrs. Weiner trapped in the front seat of their car; pinned
25 up against the dashboard. I saw a young man, young boy on

1 the couch in the back seat. I saw a young girl unconscious
2 on the road.

3 Q Do you know Sargent whether the vehicles
4 were in the same condition or position rather, same position
5 as they ended up after the accident and when they came to a
6 final stop, whenever that was, at the time that you got there,
7 10 or 15 minutes later?

8 A As far as I know, they weren't moved.

9 Q You don't know that for a definite fact, but
10 that is your best deduction?

11 A Yes.

12 Q Because of the condition of the vehicles in-
13 volved?

14 A I don't understand.

15 THE COURT: He means as though they couldn't
16 be moved or could have been moved for them to last
17 10 minutes; is that your point?

18 MR. SPATT: Yes, Sir.

19 A No.

20 Q (By Mr. Spatt) Now did you proceed to in-
21 vestigate the accident?

22 A Not at this time, I was more interested in
23 helping the hurt.

24 Q And did you -- what did you do with respect
25 to that, Sargent?

1 A I responded, I checked to see to the extent
2 of the injuries of the more severe and I checked to see the
3 extent of the injuries of the people on the bus and I notified
4 that I wanted ambulances at the scene.

5 THE COURT: Notified whom, Sir.

6 THE WITNESS: Ambulances through our com-
7 munication system. I notified some or had our
8 communication officer notify them.

9 Q (By Mr. Spatt) Did the ambulances ultimate-
10 ly respond to the scene?

11 A Yes, after a while we were having communi-
12 cation problems at this one spot.

13 Q Your first concern was to take care of the
14 injured people; is that correct?

15 A Yes Sir.

16 Q Who were the severely injured people?

17 A The severest was the little girl, the little
18 boy, the mother and the father, the Weiners.

19 Q Did you, when you had an opportunity after
20 taking care of the injured people, to the best of your
21 ability, proceed to investigate the accident, to the best
22 of your ability?

23 A Yes, I did.

24 Q And in the course of that investigation,
25 did you attempt to interrogate or speak to the drivers of the

1 cars involved:

2 A Down at the hospital, yes.

3 Q Now, did you attempt to speak to or did you
4 speak to Barbara Weiner?

5 A Not at that time, I attempted to, but I
6 couldn't.

7 Q Why couldn't you?

8 MR. LEVITT: I object to it as related to
9 my client. Object to that as not binding on Grey-
10 hound bus.

11 THE COURT: Well, if it happened, it binds
12 all the word. Now it will be for the jury to say
13 whether or not they accept what Mr. Stannard tells
14 them about what he was told, not whether it was true
15 or not; what he was told when he asked to speak to
16 Mrs. Barbara Weiner.

17 Q (By Mr. Spett) When you spoke to her, at
18 any time that day, what if anything occurred?

19 A I wasn't able to talk to her.

20 Q Did you speak to her any other time, Sargent?

21 A Approximately three days later.

22 Q Where was that, Sir?

23 A One time it was in Intensive Care Unit.

24 THE COURT: Where?

25 THE WITNESS: Intensive Care Unit, hospital.

1 Q (By.Mr. Spatt) What happened on that
2 occasion in the Intensive Care Unit?

3 A I can't really remember at that time.

4 Q And did you speak to her or attempt to
5 speak to her a third time?

6 A Yes.

7 Q Where was that?

8 A That was in a hospital room in the hospital.

9 Q And what did you ask her; how the accident
10 happened?

11 A Yes.

12 Q What did she say to you at that time?

13 A She told me she could not remember.

14 Q Did you find out there was another car in-
15 volved in this occurrence?

16 A Yes.

17 Q And was that the Stone vehicle?

18 A Yes it was.

19 Q Did you speak to the operator of the Stone
20 vehicle after the accident?

21 A Yes, I did.

22 Q And could you tell the Court and jury, did
23 you ask him how the accident happened, Sargent Stannard?

24 A Yes, I did.

25 Q What did he tell you?

1 A THE COURT: You mean a police car?

2 THE COURT: What's that?

3 THE WITNESS: Involving his vehicle and the
4 Weiner incident?

5 Q (By Mr. Spatt) No, everything, tell us
6 everything he said about the accident.

7 A That he saw Mrs. Weiner go off the right
8 side of the road, come back on the road, go across and hit
9 the bus head-on. And he tried to get around them and the
10 Weiner vehicle came back in his lane and the Weiner's right
11 rear fender and the Stone 's left rear side fender came in
12 contact.

13 Q And Sargent Stannard, did you interrogate the
14 bus driver, Mr. Brown, Mr. Ronald Brown?

15 A Yes, I did.

16 Q Where was that, Sir, do you remember?

17 A That was down in the hospital.

18 Q And did he answer your question at that
19 time?

20 A Yes, he did.

21 Q Was he able to discuss it and talk to you
22 at that time?

23 A Yes, he did.

24 Q Will you tell the Court and jury please,
25 what he said to you?

1 A That he was coming up going east on Route
2 149, he saw Mrs. Weiner lose control of the vehicle and come
3 across into his lane.

4 Q That is in substance what you remember?

5 A Yes.

6 Q I am going to show you seven photographs
7 which are in the Dwyer's Studio. Would you take a look at
8 them, Sargent.

9 Do you know Dwyer's Studio, Sargent?

10 A Yes, I do.

11 Q Who is Dwyer?

12 A His name is Thomas Dwyer and if we ever get
13 any serious accidents, serious crimes, he does the photography
14 for us.

15 Q Was he called to the scene of this accident,
16 Sir?

17 A Yes he was.

18 Q Will you tell the Court and jury about how
19 long after the accident you were able to communicate with
20 him.

21 THE COURT: Well, was he there at the time;
22 is that your question?

23 MR. SPATT: No, Sir. I asked what time he
24 was able to get ahold of Mr. Dwyer with respect to the
25 accident.

1 (By Mr. Zawacki) There was some time
2 A Approximately half hour, 45 minutes he
3 arrived at the scene.

4 Q (By Mr. Spatt) I see. So you say in
5 about a half hour to 45 minutes, was that a half hour after
6 five minutes from the time you got there, Officer?

7 A Approximately, yes.

8 Q So that would be about three quarters of an
9 hour to an hour after the accident itself; is that correct?

10 A Approximately. Approximately, again I
11 didn't look at my watch.

12 Q And after he got there, did he take the
13 photographs that you have in front of you?

14 A Yes.

15 Q Now Sargent Stannard, I ask you whether
16 those photographs fairly and accurately represent the con-
17 dition of the vehicles involved when you first saw them,
18 when you came to the scene of this accident?

19 A Yes Sir.

20 Q I ask you whether those photographs fairly
21 and accurately represent the condition of the roadway at the
22 time of this accident?

23 MR. CAMERON: Before we get an answer,
24 maybe to that, shouldn't the question be at the time
25 the police officer arrived? He doesn't know what

2 THE COURT: I think that modification
3 should have been made.

4 MR. SPATT: I'm going to ask him that,
5 your Honor, but first--

6 THE COURT: But don't ask him the question
7 which counsel points out he can't answer. Ask
8 him the one he can answer.

9 Q (By Mr. Spatt) Do the pictures thoroughly
10 respresent the condition of the roadway as it was when you
11 first arrived at the scene of the accident?

12 A Yes.

13 MR. SPATT: I will offer those photographs
14 in evidence, your Honor.

15 THE COURT: I think you gentlemen saw them
16 on Wednesday, did you? Well, you saw a whole lot
17 of them, so maybe you better look.

18 MR. SPATT: They are all the ones that I
19 have.

20 MR. LEVITT: I have no objection.

21 MR. CAMERON: No objection.

22 MR. ZAWACKI: I have no objection.

23 THE COURT: They will be received.

24 MR. SPATT: Mark them 1A. I think 1-1-A
25 is better because they will be the same type of

11 Were those notes that you made yourself?
2 THE COURT: If for any reason to sort
3 pictures later on, we will know who is who.

4 THE CLERK: Now, Plaintiff's Exhibit 1, then
5 1-A through 1-F in evidence.

6 (Whereupon photographs are received and
7 marked Plaintiff's Exhibits 1 and Plaintiff's Exhibits
8 1-A through 1-F in evidence by the Clerk of the Court.)

9 MR. SPATT: May I have the jury see these
10 photographs, your Honor?

11 THE COURT: Yes. Perhaps the jury ought
12 to take a little time to look at these. I suggest
13 that you look at a picture and pass it right away,
14 maybe you can take four and the gentleman in the
15 back take three and then examine it, pass it and
16 then we can get the end of the line, switch it
17 around that way.

18 (Whereupon the jury looks at pictures.)

19 Q (By Mr. Spatt) Officer, what was the
20 condition of the weather at the time of this accident, do
21 you know?

22 A At the point of the accident?

23 Q Yes.

24 A No.

25 Q Does that mean that you don't remember that

Sargent:

Any reason you didn't bring the book?

2 A Well, I couldn't know what the weather was
3 at the point of the accident. I know what the weather was
4 at that time of the day.

5 Q Now, did you, after you made an investigation
6 of this accident, draw up a diagram of some kind?

7 A Yes, I did.

8 Q Now, I show you records that were subpoenaed
9 into Court.

10 THE COURT: Well, is that that missing
11 page question?

12 MR. LEVITT: Yes Sir, the page we agreed
13 would be put in.

14 MR. SPATT: This was the page that was
15 missing, the one on the back, that is not the page.
16 I know nothing about that, Mr. Levitt. I don't
17 know anything about that, I never saw that before
18 you showed it to me.

19 THE COURT: All right. The jury will
20 have a short recess. See if we can untangle this.

21 By the way, is it warm enough, too warm.

22 (Whereupon the jury leaves the courtroom
23 at 10:20 A.M. and the following proceedings were had
24 in their absence:)

25 MR. SPATT: The records were mailed to me,

4
A NO.
2 one page, not a diagram missing. There was the key
3 page where the people who were injured and I made a
4 photostat, had the narrative, how the accident
5 happened.

6 It had a diagram attached, there was no
7 question about that. That is the diagram that was
8 attached, that is attached to my copy of the police
9 report also. What wasn't attached was the second
10 sheet that had all of that data, how the accident
11 happened. The reason it probably wasn't, is because
12 it was stapled on the back.

13 THE COURT: I don't care, I want to know
14 what the jury sees is the whole of the record pre-
15 pared by Mr. Stannard, if he is the one prepared for
16 it's preparation. I don't care who mailed anything.
17 I request you to straighten it out and straighten it
18 out quickly.

19 MR. ZAWACKI: Your Honor, may I ask--

20 MR. SPATT: Police report--

21 MR. ZAWACKI: What about it?

22 MR. SPATT: I am just trying to offer it.

23 MR. ZAWACKI: You want to offer it in
24 evidence?

25 MR. SPATT: No Sir. I want to refresh his

THE COURT: We are all set--

MR. CAMERON: Back of the second page or first page?

MR. SPATT: Back of the first page.

MR. CAMERON: This part here?

MR. SPATT: This is the photostat I made, exact photostat. All right, we are all set.

THE COURT: We are all squared away.

MR. SPATT: Before we bring the jury back, this is what came from the police department records.

MR. CAMERON: It is different.

MR. SPATT: This is what it is, a copy that I have or show you in my own police report.

MR. ZAWACKI: Isn't it?

MR. CAMERON: No, it is different.

MR. SPATT: It's different?

THE COURT: Is it just a question of an enlargement?

MR. CAMERON: No, it is not, your Honor, it is different.

THE COURT: Ask Mr. Stannard which is his picture, which he put in the report if any.

MR. CAMERON: This is the one we lawyers all have. This is the one from the police department.

MR. ZAWACKI:
2 to my copy of the police report.

3 THE WITNESS: There was a mistake, our
4 secretary sent out originals of these.

5 THE COURT: When I redid it--

6 MR. SPATT: Were they both made by you?

7 THE WITNESS: Both basically the samething.

8 THE COURT: Another words, I understand
9 Mr. Stannard, what he said was the one, that's an
10 original on the wide piece of paper, short wide
11 piece of paper was the first draft.

12 THE WITNESS: Right.

13 THE COURT: The one on the long draft is
14 the finished one that you incorporated in your report
15 as what?

16 MR. SPATT: If you give me a copy of that
17 I will put it in with this

18 THE COURT: We can make copies in moments.

19 MR. CAMERON: This is it. That is another
20 one, where did this come from?

21 MR. SPATT: That is the bus driver's.

22 THE COURT: That's still another.

23 THE CLERK: What would you like copies of?

24 THE COURT: Can you slide it out of there?

25 MR. CAMERON: I don't have a copy of the

2 made too?

3 THE COURT: Mr. Levitt, have you got them
4 both; have you got either of them?

5 MR. LEVITT: I got the one, Judge, that is
6 the one I brought over.

7 THE COURT: Will you lend one. All right.

8 Mr. Walz can be making it, we can go ahead now.

9 (Whereupon the jury enters the courtroom
10 at 10:28 A.M. and the following proceedings are
11 resumed within their presence:)

12 THE COURT: Please be seated.

13 Q (By Mr. Spatt) Sargent Stannard, have we
14 now established there are two diagrams? One that was sent
15 to me by mail from the Queensbury Police Department and one
16 that was the finished product that one.

17 In other words, the one I refer to as the
18 short one was a rough diagram and then another one a long
19 one was a smooth or finished diagram?

20 A Yes Sir.

21 Q Now, they were both done by you of your
22 own handwriting?

23 A Yes Sir.

24 Q Do you know, Sargent, at what angle the
25 Weiner car came across the road?

2 Q When you put an angle of the Weiner car in
3 any diagram, was that based on personal knowledge of any
4 kind?

5 A No, just from one point to another.

6 Q I see. But is it, was it intended to be
7 an approximate angle or was it reasonably accurate?

8 A It was approximate.

9 Q And you have made certain measurements be-
10 tween certain points; is that correct?

11 A Yes Sir.

12 Q As to exactly where the Weiner car came
13 across, that you don't know?

14 A No.

15 Q Directing your attention to the short
16 diagram, will you take a look at the top of that diagram--

17 MR. SPATT: May I approach the witness,
18 your Honor?

19 THE COURT: Yes.

20 Q (By Mr. Spatt) --and there is something,
21 a figure there. First of all, is this diagram hand-
22 written in your own handwriting?

23 A Yes, I believe so.

24 Q It says--I believe it said--40 miles or 40
25 miles--something like that; does it not, Sargent?

1 A Yes , it does.

2 Q Could you tell the Court and jury, if you
3 can, what you meant when on the top of the diagram you put
4 40 mile or 40 miles?

5 MR. LEVITT: If your Honor please, may that
6 diagram go in evidence since they are referring to
7 a paper not in evidence. I would like it to go in
8 evidence.

9 THE COURT: It can be marked for identifi-
10 cation at this time.

11 MR. LEVITT: Thank you.

12 THE COURT: Exhibit 2 for identification.

13 THE CLERK: Plaintiff's Exhibit 2 for
14 identification, short diagram.

15 (Whereupon a short diagram is received and
16 marked Plaintiff's Exhibit No. 2 for identification
17 by the Clerk of the Court.)

18 Q (By Mr. Spatt) I just want to know about
19 that, not about anything else at this point. What did you
20 mean when on the very top next to the date, 3-7-71, you put
21 40 mile, if you know?

22 A I am not really sure what that meant.

23 THE COURT: What was that?

24 THE WITNESS: I am not really sure what I
25 meant by that.

1 Q (By Mr. Spatt) Well, let me ask you this
2 Did it mean 40 miles an hour was the speed limit?

3 A No.

4 Q Where did you ascertain Sargent Stannard,
5 where the impact between the bus and the Weiner car took
6 place, where on the road?

7 A Approximately on the middle of the Greyhound
8 Bus's lane; maybe a little more to one side than the other.

9 Q (By Mr. Spatt) You say "middle of the
10 Greyhound Bus," would that be the westbound going to New York?

11 A Yes Sir.

12 Q You said maybe a little more on one side
13 to another? Which side would be a little more to the--

14 A Closer to the guard rails.

15 Q But would you say it was not near the side,
16 the right side; is that correct?

17 A What do you mean by the "right side"?

18 Q Well, you said it was in the middle of the
19 westbound lane nearer to the shoulder.

20 THE COURT: Nearer to the guard rail.

21 Q (By Mr. Spatt) Guard rail.

22 THE COURT: I think Mr. Spatt's question
23 is how far over towards the guard rail was it.

24 THE WITNESS: I couldn't tell.

25 Q (By Mr. Spatt) So your best recollection

1 is that it was somewhere in the middle, the area of the west-
2 bound lane, but if you had to say which way was closer, it was
3 closer towards the right-hand side, right?

4 A Closer to the guard rail, yes.

5 Q But still on the paved portion; is that
6 correct?

7 A Yes, still on the paved portion.

8 Q Somewhere near the middle of the westbound
9 lane; is that correct?

10 A Somewhere.

11 Q And did ambulances come to scene of the
12 accident, Sargent?

13 A Yeah, they did.

14 Q And do you remember who was taken away in
15 the ambulance?

16 A Not by name, except for Weiners and Grey-
17 hound Bus driver. I think there was approximately seven
18 or eight people in the Greyhound Bus taken to the hospital,
19 also passengers.

20 Q Now Officer, when you told us where the
21 point of impact was between the bus and the car, could you
22 tell the Court and jury how you ascertain that, Sargent?

23 A Well, when you come out on the accident,
24 usually where all the gravel bits and pieces of steel are
25 laying in one certain spot, this is where the initial shot

1 was.

2 Q Is there a name for that degree or substance
3 that is on the road where the point of impact was?

4 THE COURT: You mean a police term?

5 Q (By Mr. Spatt) Police term or accident
6 reconstruction term.

7 A Just point of impact.

8 Q Did you ever hear the word impact degree,
9 Sargent?

10 A I have referred to that, yes.

11 Q Would that be the degree when there is an
12 impact head-on between two vehicles, everything that is
13 struck under the car, the dirt and everything else comes
14 shooting down, drops right down to the ground where the
15 impact took place; is that correct?

16 A Yes.

17 Q Is that what you refer to?

18 A Yes.

19 MR. SPATT: No further questions.

20 THE COURT: Are you ready, gentlemen?

21 Very well.

22 CROSS-EXAMINATION

23 BY MR. ZAWACKI:

24 Q Officer, in the two days before this
25 accident happened, there had been about what, about five

1 feet of snow up in that area.

2 A I couldn't remember.

3 Q I had it wrong. About two feet and five
4 days prior to the accident; is that right?

5 A I couldn't remember.

6 Q Does that refresh your recollection?

7 I don't want you to tell me what's in there,
8 I just want you to tell me if that refreshes your recollection
9 as to the amount of snow that that area had in the five days
10 prior to the accident, five days before the accident.

11 A I still couldn't remember.

12 Q Was there a lot of snow on the side of the
13 road where the accident occurred when you got there?

14 A There was a quantity, yes.

15 Q Well, a quantity could be a couple of inches,
16 a couple feet.

17 A My quantities are mere quantities, probably
18 different.

19 Q Well, look at the pictures, that is fair
20 and accurate as to the amount of snow, this photograph,
21 Plaintiff's Exhibit D-1 in evidence.

22 A You have snowbanks there that have been
23 plowed.

24 Q Plowed?

25 A Snowbanks.

1 THE COURT: D. 2 MR. ZAWACKI: D.

3 THE COURT: D as in David.

4 Q (By Mr. Zawacki) There was some ice and
5 snow on the road, wasn't there, when you got there?
6 Forgetting about what was plowed and what we call snowbanks,
7 was there ice and snow on the roadway.

8 THE COURT: On the roadway surface.

9 A There wasn't any ice. A little bit of
10 snow.

11 Q You filled out a report about this accident?

12 A Yes, I did.

13 Q Did you report that the weather and road
14 conditions-ice--is that what you report for weather conditions,
15 "snow and ice"?

16 A I have to look.

17 Q Do have one of these?

18 A I have one in my briefcase here now.

19 THE COURT: Mr. Zawacki, the witness is
20 ready.

21 A Yes, I put down snow and ice.

22 Q (By Mr. Zawacki) Now you had a conversation
23 with the bus driver right at the scene of the accident?

24 A In regard to who was hurt, how seriously
25 hurt.

1 Q In regards to how the accident happened?

2 A I don't believe so.

3 Q When did you have a conversation with the
4 bus driver?

5 A At the hospital.

6 Q How soon after the accident?

7 A Probably two hours.

8 Q Did he tell you how far away from him, from
9 his bus, the Weiner car was when he saw it in trouble or run
10 off the road, side of the road or whatever he told you?

11 A Yes, he said approximately 250 feet.

12 THE COURT: From what to what?

13 THE WITNESS: From when he saw the car
14 lose control.

15 THE COURT: What was the distance you gave?

16 THE WITNESS: Approximately 250 feet.

17 Q (By Mr. Zawacki) Now, is there anything
18 in your report that refreshes your recollection as to that
19 answer 250 feet.

20 A Not in every point, no.

21 Q Is there any, in any report that refreshes
22 your recollection as to that?

23 A No. Just the report I took notes, I took
24 at the accident, at the time.

25 Q Which notes are they?

1 A my own person. Diagram was based

2 Q Do you have them with you?

3 A No.

4 Q Were those notes that you make yourself,
5 right at the scene of the accident?

6 A No.

7 Q Is that--well, let me start it this way:
8 Are you required to carry a book by the police department,
9 a memo book?

10 A We carry a book where we write down our
11 calls and such.

12 Q Are you required to carry that?

13 A Not required, no.

14 Q But you did at the time?

15 A I always do.

16 Q You put your personal notes about this
17 accident in the book?

18 A About certain accidents, certain investiga-
19 tions.

20 Q I don't care about the others, did you just
21 have notes in the book about this one?

22 A Yes.

23 Q Were you in Court here yesterday, did you
24 have the book with you?

25 A No.

1 Q Did you know you were going to be here?
2 this case?
3 A Yes.
4 Q Any reason you didn't bring the book?
5 A Yes.
6 Q Well, I guess I better find out what it
7 was.
8 A I didn't feel I needed to.
9 THE COURT: What was that?
10 THE WITNESS: I didn't feel I needed to.
11 Q (By Mr. Zawacki) In other words, you felt
12 the reports are here, the police report is here, and the
13 diagrams that are here are sufficient?
14 A Yes Sir.
15 Q But nowhere on those reports or diagrams
16 is there any 200 feet that you tell us about now?
17 A No.
18 Q Did anybody ever ask to see your book prior
19 to coming down here to testify?
20 A No, they did not.
21 Q Anybody, a signed statement as far as what
22 you recall about that accident, a signed statement to some-
23 body?
24 A Just the accident report.
25 Q That's it. Did you ever take the signed

2 A To what happened?

3 Q Yes.

4 A No.

5 Q You made, filled out a diagram at the scene
6 of the accident?

7 A No.

8 Q At some point after the accident you made
9 up a diagram?

10 A Yes.

11 Q The first diagram you ever made up about
12 this accident is what? Is this it?

13 A Yes, that's the one.

14 Q That's your own hand?

15 A Yes.

16 Q How soon after the accident did you make
17 it up?

18 A I took the measurements the next day, I
19 made some of the diagram that night.

20 Q That night or the next day?

21 A Some of it was done right after the
22 accident, well, not right after, within four, five hours
23 then some was taken the next day on measurements, when I
24 took the measurements.

25 Q So the diagram was made up the next day?

A SOME OF THE DIAGRAM, YES.

Q Was this after you talked to the bus driver?

A Yes.

Q Has this been marked as an Exhibit?

THE COURT: No, the other one, I think it was, wasn't it?

MR. SPATT: Short one was marked for identification, your Honor.

THE COURT: Yes.

MR. SPATT: Plaintiff's Exhibit 2 for identification.

MR. ZAWACKI: That is this one.

THE COURT: Is that the short one?

MR. SPATT: This is the short one that is in.

THE COURT: That is then as far as identification.

Q (By Mr. Zawacki) This is in your own hand?

A Yes Sir.

Q The measurements are yours?

A I made them with the help of another officer.

Q The diagram is yours?

A Yes.

Q In your hand?

A Yes.

1 4 11 Q A Because some people that live right over
2 to what you found when you got there?

3 A Yes.

4 MR. ZAWACKI: I offer it into evidence,
5 your Honor.

6 MR. SPATT: May I have a question on this,
7 voir dire, your Honor?

8 THE COURT: Are there any objections by
9 any other Counsel? All right.

10 VOIR DIRE EXAMINATION

11 BY MR. SPATT:

12 Q I am just going to ask you one thing, the
13 angle as I asked you before that you have here, you have a
14 line going across which is obviously the Weiner car coming
15 across the double yellow line, coming in contact with the
16 bus, is that the angle that it actually came across?

17 A No it's not.

18 Q How did you arrive at this, I mean it's
19 an important thing if we are going to have this in evidence,
20 the jury is going to see an angle here, is that just an
21 approximation by you?

22 A It is an approximation.

23 Q It might be wrong?

24 A The angle might be.
25

2 have no objection to the diagram except that the
3 angle isn't the angle.

4 THE COURT: That's not what he said.

5 Q (By Mr. Spatt) Well, did you intend this
6 angle to be the right angle, the correct angle, when you
7 put it in the diagram?

8 A No I did not.

9 MR. SPATT: I object to that, if your
10 Honor please, I object to the angle in the diagram
11 if he didn't intend it to be.

12 THE COURT: Yes.

13 MR. ZAWACKI: Your Honor, I think we all
14 understand the angle is not accurate.

15 THE COURT: I think then perhaps he might
16 be asked if Counsel wish, on what basis did you put
17 that angle in, if you have a basis.

18 CROSS-EXAMINATION

19 BY MR. ZAWACKI: (CONTINUED)

20 Q Well, you heard Judge Dooling's question;
21 can you answer that?

22 A Yes, I can. It was the distance from
23 where she left the road, the first time, and hit the bus.

24 Q How did you know where all that happened,
25 where she left the road the first time, where she hit the

4 do you recall this question and this answer?
2 A Because I could see where she had run off
3 the road.

4 Q An angle approximate between those two
5 points?

6 A Yes.

7 Q This angle as it appears on this diagram,
8 is it approximate as running?

9 Let me start again, Officer.

10 You know the point she left the road?

11 A Yes.

12 Q You know the point where the contact be-
13 tween her car and the bus took place?

14 A Yes.

15 Q You measured the distance?

16 A Yes.

17 Q Hundred and four feet?

18 A Yes.

19 Q When you drew the diagram, you put an
20 approximate angle there?

21 A Approximate, es.

22 Q Not meant to be drawn to scale?

23 A No.

24 MR. ZAWACKI: With that reservation, your
25 Honor, I renew the offer.

MR. SPATT: I would like to ask another couple of questions on this voir dire, your Honor.

VOIR DIRE EXAMINATION

BY MR. SPATT: (CONTINUED)

Q What you did then, Officer, Sargent rather you determined where the point, where she went off the road, determined the point of impact from the impact degree and you drew a line between those points; is that correct?

A To show the distance, yeah.

Q All you intended to do was show the distance between that point where the impact occurred and the point where she went off the road?

A That's right.

Q And this hundred and four feet, that hundred and four feet is from the point where she went off the road, hit the guard rail, then the point of impact; is that correct?

A That is correct.

Q That is not a hundred and four feet east in the direction she was going, is it?

A No.

Q That's just diagonally across; is that correct?

A Yes.

THE COURT: Are we going to get back in
the high school geometry, that is the hypothesis?

MR. SPATT: I don't know, Judge, I never
was too good at that.

THE COURT: He has explained what it is.
I take it that evidence will imply to us that he
was able to determine the point of impact between
the Weiner car and the guard rail and he has been
asked and has told us how he located the point of
impact. Then he measured that distance, found it
to be a hundred and four feet.

MR. SPATT: May I ask another?

THE COURT: Is that it, Sargent?

THE WITNESS: Yes Sir.

THE COURT: All right.

Q (By Mr. Spatt) And when you drew this in
freehand I imagine; is that right?

A Yes Sir.

Q You could have put the point where the
impact was, west or east on the road, and the point where
the guard rail was, east on your diagram, you could have
put it anywhere within the distance; is that correct?

A Yes.

Q And your line across could be way off; is
that correct?

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THE COURT: The angle.

Q (By Mr. Spatt) The angle could be way off?

A Yes, it could.

THE COURT: In other words as I understand the questioning, unless the linear distances and the lateral distances were in scale; that is, the width of the road is exactly right in terms of distance along the road, you couldn't have a faithful angle, so that hasn't been done, we don't know what he is drawing to the geometric scale.

MR. CAMERON: Sargent, would it be fair to say that based on your conversation with Mr. Brown, Mrs. Weiner and the Stones, reviewing the area and after these reviews of the facts, the position of the vehicles, you drew this diagram based on the best of your ability; is that correct, Officer?

THE WITNESS: That's correct.

MR. CAMERON: No further questions, your Honor.

MR. ZAWACKI: Do we have a copy of this?

THE COURT: I think copies have been made available to everybody. Now Mr. Zawacki, everybody has one, I think. Both diagrams.

1 MR. SPATT: The one marked for identifica-
2 tion?

3 THE COURT: Yes, because you are going to
4 offer it in evidence.

5 MR. ZAWACKI: He has a copy of it.

6 MR. SPATT: May I do that, Judge?

7 THE COURT: If this is a faithful copy of
8 it, why not leave it where it is, Mr. Walz can mark
9 it Exhibit 2 in evidence.

10 (Whereupon the diagram is received and marked
11 Exhibit No. 2 in evidence by the Clerk of the Court.)

12 THE CLERK: So marked, your Honor.

13 CROSS-EXAMINATION BY MR. ZAWACKI: (CONTINUED)

14 Q I am going to leave that with you, Sargent,
15 in case you want to refer to it.

16 MR. LEVITT: I am sorry to interrupt.
17 May I have the Exhibit No. of that?

18 THE COURT: Exhibit No. 2 in evidence.

19 MR. LEVITT: I see. Thank you.

20 Q (By Mr. Zawacki) Now Officer, did the
21 Weiner vehicle skid?

22 THE COURT: Did he see any evidences on
23 the roadway of the skid.

24 MR. ZAWACKI: I adopt your Honor's question.

25 A Did the Weiner vehicle skid?

1 Q (By Mr. Zawacki) Yes. I want you to
2 look at your report, if you need it, you can have it.

3 THE COURT: Is it in front of the witness?

4 MR. ZAWACKI: No, just a diagram, I have
5 a report. Use it if you need it.

6 A Would you explain to me what you mean by
7 "skidding". You mean sliding across the road?

8 Q (By Mr. Zawacki) Well, let me ask you a
9 question: What do you mean by skidding? You put down skid
10 on your report.

11 A Yes, I did.

12 Q What do you mean by skid?

13 A That she went across the road. She lost
14 control of her vehicle.

15 Q You mean, how long have you been a police
16 officer before this accident?

17 A About a year, year and a half.

18 Q You have driven a vehicle for many years
19 before you became a police officer?

20 A Yes.

21 Q Doesn't skid to you mean sliding across the
22 road? I am not interested now in what you have in your
23 report, I am just asking you a question. Lawyer to witness.
24 Doesn't skid to you mean a vehicle sliding across the road?

25 A It could, yes.

1 Q You put down skid on your report?
2 A Yes, I did.
3 Q So after you talked to the bus driver then
4 you put down skid on your report?

5 A Yes, I would have made this out some time
6 the next day.

7 Q Now, the area where the accident occurred:
8 two pretty good miles on either side with a dip in the
9 middle, bottom of it.

10 A Well, the one on the east, west side is
11 much higher.

12 Q West side would be the way the Weiners --
13 that's the New York side; isn't it?

14 A Yes.

15 Q The Weiners are coming from west to east?

16 A Right.

17 Q They are coming down the Hill?

18 A Yes.

19 Q That hill is the larger of the two?

20 A Yes.

21 THE COURT: Is the grade steeper, is that
22 it?

23 THE WITNESS: Yes Sir.

24 Q (By Mr. Zawacki) The Greyhound Bus is
25 coming down a hill going westbound?

5 collision between the Weiners and the bus.
1 A A small hill, yes.

2 Q Not as--

3 A Not as large.

4 Q Not as steep as the other, is that it?

5 A Yes Sir. There is a dip.

6 Q On which side of the dip did the actual
7 impact happen on? Did it happen on, we will call it, the
8 New York State side or Vermont side?

9 A New York State side going up the hill.

10 Q In other words, the actual impact, it
11 happened on the hill that the Weiners had been coming
12 down on?

13 A Yes.

14 Q They had not gotten to the bottom of the
15 hill?

16 A No, they didn't.

17 Q At the time of the accident, the bus was
18 going up a hill?

19 A Going up a hill.

20 Q Had passed the dip already?

21 A Yes, he had.

22 Q And by the way, let me just ask you this :
23 You made another diagram, a larger one. Sometime after
24 you made up what we have in evidence, as Exhibit No. 2.

25 A Yes.

1 Q But that was the first you made up, --
2 A That was my notes.
3 Q That was your notes, your original notes
4 and what you made up in the second larger diagram was based
5 on the smaller diagram?

6 A Yes.

7 Q Try to be a little neater.

8 A Yes .

9 Q Little larger?

10 A Little larger.

11 Q On the first diagram, as a result of your
12 investigation; as a result of your observation of the scene;
13 as a result of your talk with the bus driver, it wasn't
14 based on all these things, this diagram?

15 A Yes.

16 Q You haven't spoken to the Weiners?

17 A No.

18 Q Have you spoken to Mr. Stone?

19 A Yes.

20 Q As a result of what those two drivers told
21 you and what you saw, where on this diagram--let me with-
22 draw that.

23 Where did you place the bus at the point
24 of impact; was it on the road, on the shoulder, or half and
25 half?

1 A Half and half.

2 Q Is the bus No. 1 in this diagram?

3 A Yes, it is.

4 Q And that diagram that you made up yourself,
5 is it on the road or on the shoulder?

6 A It is on the shoulder, well, it is on the
7 road.

8 Q Any part of it on the shoulder in that
9 diagram?

10 A No.

11 Q That is the first one?

12 A Um hum.

13 Q The bus was moved backward by the impact.
14 Withdraw that--

15 Is that what the bus driver told you, the
16 bus was moved back, pushed back by the impact?

17 A I can't really remember. I know I have
18 it down there, but I can't determine who I learned it from.

19 Q Somebody told you the bus was pushed back
20 as a result of the impact?

21 A I really can't answer that.

22 Q As a result of your investigation, and you
23 can't tell us right now, just how you determined it, you
24 did determine now the bus had been pushed some eight or ten
25 feet by the impact; is that correct?

1 A According to what you said...

2 Q This was the first one you ever made up?

3 A Yes.

4 Q So when you got to the scene of the accident
5 and found the bus that was after the bus had been pushed?

6 A Yes.

7 Q Now when you spoke to, was it Mrs. Weiner
8 you spoke to the first time, she couldn't talk to you?

9 A At the hospital?

10 Q Right.

11 A Yes.

12 Q Second time she couldn't talk to you?

13 A Yes.

14 Q You stated it was the third time she told
15 you she doesn't know anything?

16 A She could not remember anything.

17 Q Now did you talk to the personnel at the
18 hospital and inquire as to whether or not she had amnesia
19 from the accident?

20 THE COURT: Any what, Sir?

21 MR. ZAWACKI: As to whether she had amnesia
22 before the accident.

23 A No.

24 Q (By Mr. Zawacki) From the top of the hill
25 to the point of the accident, was how many feet?

1 A Approximately 800 feet.

2 Q Are we talking to the steeper hill that the
3 Weiners were coming down?

4 A Yes.

5 Q When you got to the scene of the accident
6 was the traffic backed up on Route 149?

7 A Yes, it was.

8 Q Well, both directions?

9 A Well, I presume so, from the east, but
10 from the west there was four, five cars that I had to get
11 around.

12 Q You came from the New York State side,
13 from the west side?

14 A Yes.

15 Q You came the same way the Weiners had been
16 driving?

17 A Yes.

18 Q The little girl was out of the car when
19 you got there?

20 A Yes.

21 Q Do you know at what point in time she was
22 thrown from the car or in fact she was even thrown from the
23 car?

24 A She wasn't thrown.

25 THE COURT: She was not?

1
2 Q (By Mr. Zawacki) How were you able to
3 determine that?

4 A Because some people that live right over
5 the hill from the accident when they heard the accident,
6 they called the police and they ran up to assist.

7 Q You might as well tell us the rest.

8 A One of them had the slip she was in, they
9 covered her up.

10 Q They took her out of the car?

11 A Yes.

12 Q Is that what they told you?

13 A Yes.

14 Q Now you testified at a motor vehicle
15 hearing about this accident.

16 A Yes, I did.

17 Q Was the bus driver there?

18 A Yes, he was.

19 Q Did you hear him testify?

20 THE COURT: Were you present?

21 THE WITNESS: Yes, I was.

22 Q (By Mr. Zawacki) Do you remember hearing
23 him, now bear in mind 200 feet you told me about.

24 Do you remember hearing a question put to
25 him about how far he was from the Weiner vehicle when he

THE COURT: What do you say to that?
1 first saw it in trouble?

2 A No.

3 Q There was some testimony, Officer, I want
4 you to know, if you recall this, this was the bus driver at
5 the hearing, Page 8, question --

6 THE COURT: Have you another copy?

7 MR. SPATT: I don't have any, your Honor.

8 MR. ZAWACKI: I borrowed this from another
9 lawyer, your Honor.

10 THE COURT: Can you get up there and
11 watch, please --

12 Q (By Mr. Zawacki) The question on Page 8,
13 now this is a question put to the bus driver, not you, I want
14 to know if you recall this:

15 "Question, As you proceeded along, what
16 happened, what did you observe?

17 "Answer, I observed Mrs. Wainer coming down
18 a slight grade. When I noticed her she hit the guard rails
19 on the right-hand side of the road, she bounced off the
20 guard rails and came across in my lane, hitting me head-on.

21 "Question, When you first saw her vehicle,
22 how much distance was there between the two of you?

23 "Answer, It is hard to say, I would say
24 roughly 800 feet."

25 Did you recall him saying that?

2 Q All right. Let me ask you about your own
3 testimony, reading from Page 29. This is what you said,
4 do you recall this question and this answer -- let me with-
5 draw that for a minute.

6 When you testified here, did you have your
7 personal or private notes with you?

8 A No.

9 Q Do you recall giving this answer to this
10 question, talking about you, now:

11 "Question, When you spoke to Mr. Brown,
12 what if anything did he tell you?"

13 "Answer, He informed me that he was going
14 west on Route 149 and could see her go off the right side of
15 the road and come back into his lane and that he was practically
16 stopped when the accident happened. And that he was thinking
17 of taking his bus and putting it over the bank, because he
18 could see it coming for a long ways.

19 "He could see the accident forming and tried
20 to get over to the guard rails as far as possible to come to a
21 complete stop."

22 Do you recall giving that answer to that
23 question, you?

24 A Most of it, yes.

25 Q That was Page 29.

At the hospital following the accident, the driver then did tell you, did he not, that he could see this accident coming for a long ways?

A He informed me that he could see her losing control. Exactly what he said, I can't remember.

Q Well this motor hearing --

A If that's what it says, I said it.

THE COURT: I think there is one bit of information, Mr. Zawacki, this jury hasn't got, that is the date of the hearing.

MR. ZAWACKI: I am looking for it, your Honor.

THE COURT: Is it on the cover? It should be normally, it doesn't look as if it is this time, Mr. Cameron --

MR. SPATT: Do you have the date?

MR. LEVITT: It is on the front cover.

THE COURT: He hasn't got the front cover.

MR. LEVITT: November 3, 1971 at 1 o'clock P.M. before Referee Frank Dursky (phonetic).

Q November of 1971, that was about seven months after the accident; is that right?

A Yes Sir.

Q Was your memory about the accident better then than it is now?

1 A Probably, yes.

2 Q Well then, I ask you again, is that what
3 the bus driver told you that he could see the accident coming
4 for a long ways? That he could see the accident forming,
5 did he tell you that?

6 A I remember that he said something like that,
7 but whether it was word for word, I can't tell you.

8 Q I don't dispute that you told --

9 A No, I don't. Yes, I did.

10 Q That was your best recollection?

11 A Yes, that was my best recollection.

12 Q Officer, I show you this photograph. Is
13 this a fair and accurate representation of the position of
14 the bus as it looks when you got to the scene of the accident?

15 A Yes.

16 MR. ZAWACKI: I offer that photograph into
17 evidence.

18 MR. SPATT: May I see it, please.

19 THE COURT: This would be Defendant's 1,
20 Exhibit A.

21 MR. SPATT: No objection.

22 MR. LEVITT: Since this is my picture,
23 Judge, I certainly have no objection.

24 THE COURT: I'm sure it belongs to the
25 whole world now.

2 || with this. If it is necessary.
1 MR. CAMERON: Defendant's A.

2 THE COURT: Yes.

3 MR. CAMERON: No objection, your Honor.

4 (Whereupon Weiner photograph is received and
5 marked D-1A in evidence by the Clerk of the Court)

6 THE COURT: Received.

7 THE CLERK: Received defendant, Weiner
8 photograph 1A.

9 Q (By Mr. Zawacki) Give anybody a ticket for
10 anything, Officer?

11 A No.

12 Q Did you ask Mr. Stone, we have been talking
13 about the bus driver, Mr. Stone was in a Volkswagen following
14 the Weiners?

15 A Yes Sir.

16 Q Did you ask Mr. Stone how far behind the
17 Weiner car he was when he saw it go over the right side of
18 the road?

19 A I can't remember.

20 Q Did you ask Mr. Stone if he was following
21 the Weiner car for awhile?

22 A Yes.

23 Q Had he been?

24 A Yes.

25 Q Did you ask him how fast he had been going?

positions, the vehicles and

1 A I can't remember.

2 Q Did Mr. Stone tell you that he followed the
3 Weiner car all the way - well, from Route 9?

4 A Probably would have had to because you
5 couldn't pass.

6 Q Route 9 is about two miles back?

7 A Approximately.

8 Q That is heading back towards New York?

9 A Right.

10 MR. ZAWACKI: I have no further questions.

11 May I pass in photograph and diagram to the
12 jury, your Honor?

13 THE COURT: Yes, that's Exhibits 2 and A.

14 MR. ZAWACKI: Thank you.

15 THE COURT: Do you want to wait until the
16 jury has a chance to look at these, Mr. Cameron.

17 MR. CAMERON: Sir?

18 THE COURT: I think perhaps if Counsel
19 would agree and while the jury is looking at the
20 diagram, you might tell them what No. 1, No. 2 and
21 No. 3 is. If you are --

22 MR. CAMERON: Yes.

23 THE COURT: I understand one to be the bus;
24 is that right.

25 MR. SPATT: That is correct, your Honor.

3
Q NEW Sargeant, just to be sure,
1 THE COURT: Two is the Weiner car?

2 MR. SPATT: That is correct.

3 THE COURT: And three is the Stone car and
4 looking at the diagram, you must realize that certain
5 other vehicles, I'm not sure of all three, are shown
6 in two positions. At different times in inferentially
7 at different times.

8 MR. SPATT: Maybe we can clarify that
9 further, your Honor, by putting a B. W. and S., if
10 your Honor needs clarification.

11 THE COURT: When we get it back perhaps by
12 agreement we can see that that's done.

13 MR. SPATT: Yes Sir.

14 THE COURT: It should be done neatly, maybe
15 with a red crayon or something.

16 MR. SPATT: Yes Sir.

17 THE COURT: I don't know if any of you are
18 like me, but I have to lie down if a picture is
19 extended east and west, up and down. So remember
20 on this, that north is at your right hand. West is
21 the top of the picture.

22 MR. SPATT: Maybe we will take care of that
23 also, your Honor, with permission of all the Counsel.
24 When it comes back.

25 THE COURT: All right, Mr. Cameron.

1 CROSS-EXAMINATION

2 BY MR. CAMERON:

3 Q Sergeant, I believe you said when you first
4 got to the scene at that point in time it was your impression
5 there were two vehicles involved; the Weiner and Greyhound bus.

6 A Yes Sir.

7 Q Is it not a fact, Sergeant, Mr. Stone who
8 came to you and told you he was involved in this accident?

9 A Yes.

10 Q And in other conversations, who did you
11 speak to first, Brown or Stone, if you recall?

12 A I can't really recall. About the accident
13 you mean, itself?

14 Q About the accident.

15 A It would be Mr. Stone.

16 Q Did he indicate words to the effect that
17 Mrs. Weiner lost control of her vehicle?

18 A Yes.

19 Q Did he indicate that Mrs. Weiner went off
20 on the right hand of the roadway?

21 A Yes.

22 Q That she came in contact with something,
23 then went diagonally across the road?

24 A Yes.

25 Q Contacted with the bus?

1 A Right.

2 Q Did he also indicate to you that after the
3 collision between the Weiner vehicle and the bus she bounced
4 back and came in collision with Mr. Stone's vehicle in trying
5 to get out of the way?

6 A Yes.

7 Q Was that basically contrary of your conver-
8 sation with Mr. Stone, what he told you?

9 A Yes.

10 Q Were you also present at the motor vehicle
11 when Mr. Stone testified; is that correct?

12 A This was the motor vehicle that was held.
13 Yes.

14 Q And he testified; at that time were you
15 present, correct?

16 A Yes.

17 Q And did he at anytime change his version of
18 the accident as he testified as to what he told you at the
19 accident scene?

20 A Not that I can remember.

21 Q And after speaking with Mr. Stone you spoke
22 to Mr. Brown; is that correct?

23 A Yes.

24 Q And did he essentially tell you again that
25 Mrs. Weiner lost control of her vehicle?

1 A Yes.

2 Q That ultimately came in contact with the
3 front of the bus?

4 A Yes.

5 Q And did you have the opportunity at the
6 scene of the accident to speak to Mrs. Weiner concerning
7 how the accident occurred?

8 A No.

9 Q I take it her and the family were taken into
10 the ambulance to the hospital; is that correct?

11 A After awhile, yes.

12 Q I believe before you told us that you spoke
13 to Mrs. Weiner on three separate occasions to ascertain how
14 the accident occurred; is that correct?

15 A Yes.

16 Q When was the first time, do you recall, that
17 you spoke to Mrs. Weiner the first time, in the hospital?

18 A That she remembered me.

19 Q All right. When was the first time did
20 you see her in hospital?

21 A Yes.

22 Q How long after the accident was that,
23 approximately?

24 A I saw her the night of the accident but I
25 didn't talk to her.

1 Q I take it she was unable to talk to you at
2 that time?

3 A Yes.

4 Q Do you recall whether she was conscious at
5 that time?

6 A No, I can't.

7 Q When was the next time you attempted to
8 speak to or see Mrs. Weiner?

9 A Very next day.

10 Q Was that morning, afternoon?

11 A It was in the evening.

12 Q Did you in fact see her at that time?

13 A Yes.

14 Q This would be approximately 24 hours after
15 the accident?

16 A Yes.

17 Q And was she comatose; was she conscious when
18 you saw her?

19 A No.

20 Q She was unconscious. I am sorry, was she
21 conscious when you saw her the second time?

22 A I don't think so, no.

23 Q Do you recall what the conversation was --
24 did you in fact ask her how the accident occurred?

25 A After that happened.

1 Q what was her response?

2 A I mean the second time.

3 Q This is about 24 hours after the accident?

4 A I couldn't talk to her, I mean there was no
5 use talking to her.

6 Q Now the third time, when was that?

7 A That was about three days later and when
8 she was out of Intensive Care, down the hospital room.

9 Q Did you see her?

10 A I saw her with her husband at that time.

11 Q The first two occasions the husband was not
12 present, right?

13 A No, well, he was almost in the same state
14 of shock.

15 Q I see. What if anything did Mrs. Weiner say
16 to you at that time, this time, this is about four days after
17 the accident; is that right?

18 A Three to four days.

19 Q What if anything did Mrs. Weiner say to you?

20 A She couldn't remember anything.

21 Q With regard to this particular accident,
22 Sergeant, aside from the routine investigation which you
23 told us about with regard to speaking to the various partici-
24 pants in the accident, taking measurements of the roadway,
25 did you do any further tests with regard to the vehicles

1 involved in this accident?

2 I am talking about, did you check the steering
3 mechanism or check the brake mechanism on any of the brakes
4 involved?

5 A Couldn't very well check the ones on the bus
6 or the Weiner vehicle as far as the Stone vehicle, no.

7 Q Did you check the tires on any of the
8 vehicles involved, in particular the Weiner vehicle?

9 A I just looked at them, yes.

10 Q I show you these pictures, Officer, Sergeant,
11 and I ask you whether you are familiar with any one of those
12 pictures?

13 A Yes.

14 Q Do those pictures depict the Weiner vehicle?

15 A Yeah, they do.

16 Q Are there certain pictures there indicating
17 the right front wheel and the left front wheel of the Weiner
18 vehicle?

19 A Yes.

20 Q And do those pictures fairly and accurately
21 represent the condition of the front right and the front left
22 wheels of the Weiner vehicle immediately after the accident?

23 A Yes.

24 Q And do some of the other pictures indicate
25 the general condition of the Weiner vehicle after the accident?

1
2 MR. CAMERON: At this point, your Honor, I
3 offer all those pictures in evidence. There is a
4 total of seven pictures, your Honor.

5 MR. SPATT: May I see them.

6 THE COURT: Have you seen them, Gentlemen?

7 Defendant Stone Exhibit B for identification
8 at this moment. Through F or No. B-1, B-2, --

9 THE CLERK: Defendant's Exhibit B, then
10 B-1 through 6.

11 (Whereupon seven photographs are received
12 and marked Defendant Stone Exhibits B, B-1 through
13 B-6 for identification by the Clerk of the Court)

14 MR. SPATT: I have no objection, your
15 Honor.

16 MR. ZAWACKI: Can I ask a question or two,
17 your Honor?

18 THE COURT: Yes.

19
20 RE-CROSS-EXAMINATION

21 BY MR. ZAWACKI:

22 Q Now Officer, in the seven photographs that
23 were shown to you, we can see only one tire clear; is that
24 right?

25 MR. ZAWACKI: May I have those pictures?

1 MR. LEVITT: I object to that, please.
2 speak for themselves whether we can see them clearly
3 or not.

4 THE COURT: What do you say to that
5 Mr. Zawacki?

6 MR. ZAWACKI: I don't know what they are
7 pictures of.

8 THE COURT: It is a little argumentative.
9 What this really is all about, he draws your attention
10 to the fact that you should look at the pictures very
11 carefully, see what in your judgment they show about
12 the condition of the front wheels of the Weiner vehicle.
13 As shown these pictures some time after the accident.

14 Q (By Mr. Zawacki) Do all those pictures
15 take the same tire, can you tell, do you know?

16 A No, there is two pictures of the right front
17 and three pictures of the left front.

18 Q Right front, right front, right front, right
19 front, right front. Five pictures of right front, aren't
20 there? Will you look at these?

21 Is that right Officer, five pictures of the
22 right front?

23 A That's what it looks like to me.

24 Q All right. Now do you recall - let me ask
25 you quite seriously about this: do you recall at the scene,

2 These pictures weren't taken at the scene
3 of the accident, were they?

4 A No, they were not.

5 Q Some junk car?

6 A Whenever the car was taken.

7 Q Do you have a specific recollection of knowing
8 the condition of the right front tire on the Weiner vehicle
9 at the scene of the accident?

10 A No.

11 MR. ZAWACKI: I must object to these
12 pictures, your Honor.

13 THE COURT: On what ground?

14 MR. ZAWACKI: Well, it is not important,
15 I don't think in this case as to what right front
16 tire was on the wheel in some wrecking yard. It is
17 important what was on the car when the accident
18 occurred.

19 THE COURT: That's right.

20 MR. ZAWACKI: And we don't know when these
21 were taken.

22 THE COURT: There has been no question that
23 has been asked about that.

24 MR. ZAWACKI: I think we all are familiar
25 with what happens at wrecking yards to equipment on

And in particular, when a vehicle is going
cars, so for that reason I object to these pictures.

THE COURT: Mr. Cameron, you will want to --

MR. CAMERON: I renew my offer.

THE COURT: Mr. Zawacki objected, there is no evidence before the jury as to whether the car was in the same condition at the time the pictures were taken; when he saw it; and his testimony cannot extend to that.

MR. CAMERON: In answer to Mr. Zawacki, your Honor, I ask the Court, there is no change, no evidence that anything happened to the vehicle from the time of the accident up until this picture was taken.

THE COURT: No evidence of the other way, but you are the one who is offering the pictures and you must offer a foundation for them.

Q (By Mr. Cameron) The condition of the right front and left front wheel as depicted in those pictures, based on your observation of the Weiner vehicle at the scene of the accident, is there any substantial change from what you observed at the accident as depicted in those pictures?

A Not that I can see.

MR. CAMERON: Again your Honor, I offer them in evidence.

THE COURT: In other words, you do not have

1 a clear recollection of specifically examining the
2 front wheel tires; is that right?

3 THE WITNESS: I didn't at the accident.

4 THE COURT: But so far as you could tell
5 from looking at these pictures it looks like the
6 same vehicle?

7 THE WITNESS: I would say it was, yes.

8 THE COURT: Is that it?

9 THE WITNESS: The same, correct.

10 THE COURT: You assume the same tire?

11 THE WITNESS: Same tire.

12 THE COURT: I will let the jury notice the
13 point. In other words it could have been a substi-
14 tution, perfectly possible, so keep that in the back
15 of your mind in looking at these pictures that
16 Sergeant Stannard has not vouched for the identification
17 of the wheels on the vehicle at this time shown in
18 the pictures. He doesn't vouch for that.

19 (Whereupon Defendant Stone's Exhibit B-1 is
20 received and marked in evidence by the Clerk of the
21 Court)

22 THE CLERK: So marked Defendant's Exhibit
23 1B in evidence.

24 (Whereupon the following takes place at side-
25 bar out of the hearing of the jury:)

1 In other words, it is 1.0 feet or something.
2 MR. LEVITT: I would like to offer this to
3 your Honor to offer to the jury to examine the pictures
4 with this. If it is necessary.

5 THE COURT: Is that sketched?

6 MR. ZAWACKI: Do you want them to examine --

7 MR. LEVITT: If you have a better identi-
8 fying --

9 THE COURT: Anybody got any objection?

10 MR. CAMERON: I have no objection.

11 MR. ZAWACKI: I object to it yes, I do
12 object, your Honor, they haven't asked for it. If
13 they even know the tires don't look to me so good.
14 Now they want the magnifying glass. I don't think
15 it's proper to do this, to call the attention of a
16 jury to it. I don't care, let them use it if they
17 want.

18 (End of sidebar discussion.)

19 THE COURT: Members of the jury, there are
20 magnifying glasses available to you if for any
21 reason you want to see any of the Exhibit material
22 under magnification.

23 Q (By Mr. Cameron) Sergeant, after drawing
24 that first diagram which has already been offered in evidence,
25 after that, did you draw up a second diagram?

A Yes.

1 Q Was that normally the formal diagram?

2 A That was to place the cars in the correct
3 positions, the vehicles and such.

4 Q I show you this diagram and ask you whether
5 this is a photo copy of the second diagram that you drew up?

6 A Yes it is.

7 Q And was that diagram based on a review of
8 the first diagram together with your observations of the
9 vehicles at the scene of the accident and based upon your
10 conversation with Mr. Brown and Mr. Stone?

11 A Yes.

12 Q And is that a diagram that is kept in the
13 normal course of business and a record for the police depart-
14 ment, of the Police Department of Queensbury?

15 A Yes, it is kept with the accident report.

16 Q It is part of your duties not to only
17 investigate the accident but to write up accident reports
18 together with the diagram?

19 A Yes.

20 MR. CAMERON: At this time your Honor, I
21 offer in evidence --

22 MR. SPATT: If your Honor please, I want
23 to ask a question on the voir dire in this.

24 THE COURT: Yes.
25

1 VOIR DIRE EXAMINATION

2 BY MR. SPATT:

3 Q Now Sergeant, just as I asked you on the
4 first diagram, withdraw that --

5 The first diagram was drawn with Sergeant --
6 where were you when you drew this first diagram?

7 A I didn't draw it at the scene, I was -- I
8 drew some of it, it was half done in our office.

9 Q How long after the accident did you draw
10 the first diagram which is Exhibit 2 in evidence --

11 A Probably --

12 Q -- which the jury has already seen?

13 A Probably three to four hours.

14 Q That was after that diagram, you then drew
15 another diagram, Sergeant?

16 A Yes Sir.

17 Q How long after the first diagram did you
18 draw the second diagram?

19 A I would imagine the next afternoon.

20 Q The next afternoon?

21 A Yes Sir.

22 Q And did you have the first diagram with you
23 when you drew the second diagram?

24 A Yes, I did.

25 Q And is there anything that took place between

1 the time you drew the first diagram to add any additional
2 facts to the time you drew the second diagram, Sergeant?

3 A Just measurements.

4 Q Well, may I call your attention to Plaintiff's
5 Exhibit 2 in evidence which has the same measurement that I
6 can see, that you have in the second diagram; isn't that
7 right, Sir?

8 A Yes Sir.

9 Q So you had the measurements when you did
10 the first diagram, the afternoon or within a few hours of
11 the accident; is that correct?

12 A No it isn't. I stated I drew where the
13 vehicles were that night but as far as getting the measure-
14 ments I did that -- went out the next afternoon.

15 Q You went out the next afternoon and got the
16 measurements?

17 A Yes.

18 Q Am I correct in saying Plaintiff's Exhibit 2
19 which is your first diagram has the measurements on it?

20 A Yes.

21 Q It had the exact same measurement that the
22 second diagram had; is that correct?

23 A Yes Sir.

24 Q So as far as measurements, they are exactly
25 the same?

3 A Yes.
1 A Yeah, they are.

2 THE COURT: So far as to measurement
3 figures they are the same?

4 MR. SPATT: Yes Sir.

5 Q (By Mr. Spatt) So let me understand this:
6 You drew a diagram three hours after you came back to your
7 office or three hours after the accident; which is it?

8 A Three hours, probably four hours after the
9 accident.

10 Q Four hours after the accident you drew a
11 diagram that had everything but the measurement on it; is
12 that correct?

13 THE COURT: At the time you first drew it?

14 THE WITNESS: Yes, yes.

15 Q (By Mr. Spatt) Then you went out the next
16 day and got the measurement, the physical measurement 149.8
17 feet?

18 A Yes.

19 Q Then you put the measurements on the first
20 diagram; is that correct?

21 A Yes.

22 Q And then after you put the measurements on
23 the first diagram, you drew another entirely different diagram;
24 is that correct?

25 THE COURT: Well, let's leave out the

"entirely different," for the moment.

MR. SPATT: I mean separate.

THE COURT: Another diagram.

MR. SPATT: Another.

THE COURT: A whole.

Q (By Mr. Spatt) A whole other diagram.

A Yes Sir.

Q And you did not disregard the first diagram,
did you?

A No, I did not.

Q As a matter of fact I am telling you and you
have my representation as an Officer of the Court, that I
received the first diagram with the official record of the
police department that was subpoenaed by my office?

A Yes, I did.

Q And I did not receive this second diagram,
that is my representation to you and I will take the oath
if necessary, I don't think it will be --

A No, that's the truth.

Q All right. So that this first diagram was
still a record kept by the police department which they sent
in answer to a subpoena; is that correct?

A Yes.

Q Well, where is that second diagram; where is
that one?

1 A Our secretary sent it out by mistake, sent
2 all the diagrams out; all we have is this one.

3 Q That is not part of the records that was
4 sent to me?

5 A No, it's not.

6 Q And the angle that was set forth in the
7 second diagram is your educated guess, the same as the first
8 one; is that correct?

9 A Yes.

10 MR. SPATT: At this time, if your Honor
11 please, I object to the second record which I do not
12 have any copy of which was not sent down by the
13 police department. I know nothing about it until
14 it was given to me by one of the lawyers.

15 THE COURT: You can ask Sergeant Stannard
16 what if any is the status in the police records of
17 the second diagram.

18 THE WITNESS: This one went to motor vehicle.
19 This was the original one I had intended to be kept
20 with the records and due to no fault of my own it
21 was sent out. I did not have a copy of it and this
22 copy was placed in the files so that would have some
23 kind of --

24 THE COURT: What happened to the second
25 diagram?

1 A THE WITNESS: It was originals, they were
2 photostated, the original, but all the photostat
3 copies were sent out to insurance companies, motor
4 vehicle department, and lawyers that wanted a copy.

5 THE COURT: Second one? That means --

6 THE WITNESS: This one.

7 THE COURT: Sent to the Bureau of Motor
8 Vehicles?

9 THE WITNESS: Yes. This was sent to the
10 Motor Vehicle Bureau.

11 THE COURT: As part of any official report?

12 THE WITNESS: As far as an official report,
13 the motor vehicle, this is the one we used.

14 THE COURT: All right.

15 Q (By Mr. Spatt) Sergeant, I am going to
16 ask you this question then: Would you accept also my
17 representation to you that when I sent away --

18 MR. ZAWACKI: I don't think this is proper,
19 your Honor, I don't think this is proper.

20 MR. SPATT: I didn't finish the question,
21 Judge.

22 MR. ZAWACKI: It is not a question.

23 THE COURT: See, that is the problem that
24 really doesn't much matter what Sergeant Stannard --

25 MR. SPATT: I withdraw it, your Honor.

1 All right.

2 MR. CAMERON: Can we have it marked in
3 evidence now, your Honor?

4 MR. SPATT: I object to it.

5 THE COURT: Well, I don't know what, if
6 anything, is the difference between --

7 MR. CAMERON: There is a slight difference,
8 your Honor.

9 MR. SPATT: Substantial differences.

10 MR. CAMERON: Your Honor, I object to
11 Counsel's use of the word "substantial".

12 THE COURT: Yes.

13 MR. CAMERON: Is it marked in evidence,
14 your Honor?

15 THE COURT: Well, it will be received in
16 evidence.

17 Members of the jury, for what it is and has
18 been described to you as, by Sergeant Stannard who
19 repaired -- now, it will be for you to draw your own
20 inferences from it. Difference if any between the
21 significance if any, between it and the first diagram
22 and the differences if any in the data available to
23 Mr. Stannard in the interval between the two drawings.

24 THE CLERK: Now Defendant Stone Exhibit C
25 in evidence.

1 (Whereupon a diagram is received and marked)

2 Defendant Stone Exhibit C in evidence by the Clerk
3 of the Court.)

4 Q (By Mr. Cameron) Sergeant, would you look
5 at both diagrams; do you have both in front of you, the first
6 diagram and second diagram?

7 A Yes Sir.

8 THE COURT: Would this be a convenient
9 place for a short recess?

10 MR. CAMERON: All right, fine, your Honor.

11 THE COURT: We haven't given the Court
12 Reporter any rest at all.

13 MR. CAMERON: All right, fine.

14 THE COURT: We will have a short recess.
15 Please do not discuss the case with anyone or anyone
16 not on the jury until it is given to you to decide.

17 (The jury leaves the courtroom at 11:45 A.M.)

18 (Whereupon a recess was taken and the
19 following proceedings were resumed in the presence
20 of the jury at 12:05 P.M.)

21 Q (By Mr. Cameron) Sergeant, would you look
22 at the two diagrams that you drew up with regard to this
23 particular accident. And pertaining to those two diagrams,
24 is there a difference between them?

25 A Yes, there is.

1 Q Would it be fair to say the main difference
2 -- they are substantially the same except for vehicle No. 1?

3 A Yes.

4 Q That on your first diagram you have the bus
5 on the roadway in the westbound lane; is that correct?

6 A Yes.

7 Q And in the second diagram you have the bus
8 partially in the westbound lane and partially up against the
9 guard rail?

10 A Yes.

11 MR. ZAWACKI: I object to that, your Honor,
12 most certainly this is not up against the guard rail.

13 MR. SPATT: That's correct.

14 THE COURT: What's that?

15 MR. ZAWACKI: I object to the form of the
16 question.

17 MR. CAMERON: I withdraw that.

18 Q (By Mr. Cameron) In any event the second
19 diagram, you had the bus partially on the -- partially on the
20 shoulder; is that correct?

21 A Yes.

22 Q Now I show you these pictures, Sergeant,
23 that are already in evidence and in particular Plaintiff's
24 1-C and 1-D. Would it be fair to say that those pictures
25 depict the position of the bus when you arrived at the scene

1 of the accident? MR. CAMERON: I have no objection. Your

2 A Yes.

3 Q And whatever the position the bus be, whether
4 it be the second diagram or first diagram, would it be fair
5 to say that these pictures on this particular point more
6 fairly and accurately depict the bus when you arrived on the
7 scene?

8 A I lost you.

9 Q With regard to the point of where the bus
10 was, whether diagram one, diagram two, would it be fair to
11 say the picture best shows the position of the bus?

12 THE COURT: When he got to the accident.

13 A This is the picture, yes, the picture does.

14 THE COURT: That's 1-B and D?

15 MR. CAMERON: Right.

16 Q (By Mr. Cameron) By the way, in one of
17 those pictures, Officer, in Plaintiff's 1-C, the vehicle in
18 the middle of the roadway, is that the Weiner vehicle?

19 A Yes, it is.

20 Q Now, Sir there is no further question with
21 those diagrams, I believe you told us before when this accident
22 occurred you were on the force about a year and a half?

23 A Yes Sir.

24 Q As part of your training as a patrolman,
25 did you receive any instruction as to ascertain speeds of

1 motor vehicles?

2 A Yes.

3 Q And in particular, when a vehicle is going
4 a particular speed, were you given courses to calculate how
5 fast those vehicles were moving, feet per second?

6 A Yes.

7 Q Are you familiar with coefficient of friction?

8 A I have heard the term, no.

9 Q Well, in your course of studies, did you
10 see on a continuing basis while on the force --

11 A No, we went to MBT course for eight weeks.

12 Q When you had to go to this course prior to
13 this accident, if you recall --

14 A I can't really remember.

15 Q And it was an eight-week course?

16 A Yes.

17 Q Was that entire course devoted to speed of
18 vehicles?

19 A No.

20 Q And accident investigations, that sort?

21 A Yes.

22 Q In any event Officer, based on that course,
23 did you come out equipped to understand or ascertain how
24 fast the vehicles were going, were you given the speed of
25 that vehicle?

3 11 MR. SPAIN: Could you please point out
1 THE COURT: No.

2 MR. CAMERON: I will withdraw the question.

3 Q (By Mr. Cameron) Let me ask you --

4 THE COURT: Stopping distance.

5 Q (By Mr. Cameron) If a vehicle was proceeding
6 at 40 miles an hour, based on the course that you took, based
7 on being a police officer, can you give us how fast that
8 vehicle proceeded in feet per second?

9 A No.

10 MR. CAMERON: I have no further questions,
11 your Honor.

12 THE COURT: I am afraid at least half
13 the jurors can tell you if you give them an envelope
14 and pencil.

15 Q (By Mr. Cameron) Well Officer, based on
16 that, because it is a simple deduction, by taking the feet
17 in miles per hour, dividing it by the speed, find out how
18 fast the vehicle is going in feet per second.

19 THE COURT: Please let the jury in on it
20 so they won't have to do it.

21 Q (By Mr. Cameron) Officer, is there a
22 ratio of 1.4?

23 THE COURT: 1.6, 1.4?

24 THE WITNESS: Rough.

25 Q (By Mr. Cameron) Roughly is it 1.1 roughly

1 car going 40 miles an hour, 60 feet and seconds roughly 12
2 times?

3 In other words, it is 1.6 feet or something
4 like that per second per miles per hour. So if you use
5 that number and multiply it by the estimated speed of the
6 vehicle that will tell you how many feet per second the
7 vehicle would travel?

8 THE COURT: I suppose I am right about it
9 being 1.6, then at 50 miles an hour if my arithmetic
10 holds up, that is going 80 feet per second because
11 5 and 6 is 30, one-fifth is 1. I haven't forgotten
12 how to --

13 Q If a vehicle is proceeding at 40 miles
14 per hour, it is going approximately 60 feet per second?

15 A Yes.

16 MR. CAMERON: No further questions.

17 THE COURT: Is that right, yes?

18 MR. CAMERON: Yes, 1415.

19
20 CROSS-EXAMINATION

21 BY MR. LEVITT:

22 Q About deduction time, the time it takes to
23 see something, the three-quarter, three-quarter react?

24 A Roughly. That's what they say.

25 Q Officer let me first call your attention

3 that?
1 to - I haven't got the Exhibit Nos., the first large diagram.

2 THE COURT: First, the small diagram was
3 Exhibit 2. And the big one is Exhibit-C.

4 Q (By Mr. Levitt) All right. Officer,
5 just to clear one or two things up: I call your attention to
6 Exhibit C and on it, I think the directions are a little
7 wrong. You have east where west is and east where west is;
8 is that correct?

9 A That's correct.

10 Q Should be reversed?

11 A Yes Sir.

12 Q Now on your diagram that you drew, both
13 Exhibits C and Exhibit 2, you don't know proportionate sides.

14 In other words, these lanes are approximately
15 10-feet wide each, you said?

16 A Yes.

17 Q And these cars are supposed, I guess, the
18 pleasure vehicle, five and a half, six feet wide?

19 A Just about the width.

20 Q The width of a pleasure vehicle, the bus
21 is either eight or nine feet?

22 A Eight or nine feet .

23 Q That isn't shown in proportion?

24 A No.

25 Q Now you told us before that you tried to

1 get the point of impact and draw that when you started drawing?

2 A Yes.

3 Q And where you made - where the point of
4 impact occurred, you wrote the word on Exhibit C and Exhibit
5 2, point of impact?

6 A Yes.

7 Q I noticed that in Plaintiff's Exhibit 2,
8 the bus which is vehicle number one, right --

9 A Yes.

10 Q -- the bus is right alongside of the edge
11 of the road at the point of impact. Is that a fair statement?

12 A Yes.

13 Q So now this road had snow on it, on the
14 edges past the edge of the road, didn't it; am I right about
15 that?

16 A Yes.

17 Q And so am I correct in saying that when
18 the Weiner vehicle hit the bus, at that time, the bus was
19 almost as far as it could possibly get without being up
20 against the rail?

21 MR. ZAWACKI: I object to that. How
22 does he know what happened?

23 THE COURT: He may agree to a certain
24 extent, but don't drive it, Mr. Levitt.

25 Q (By Mr. Levitt) I just thought because

1 he was my witness, I might -- all right.

2 At the point of impact at the right, there
3 was snow at the edge of the road and then there was this
4 fence: is that correct?

5 A Snow and then the fence, yes.

6 Q What is beyond the fence on the other side
7 of the fence?

8 A A drop off, a ravine.

9 Q A drop off. Now, when you got to the
10 scene of this accident Officer, am I correct in saying the
11 Greyhound bus was off against the guard rail, next to the
12 guard rail?

13 A Yes.

14 Q You couldn't open the door?

15 A No you could not.

16 Q Had damaged the guard rail a little bit,
17 pushing them back? Am I correct in that?

18 A There was damage to the guard rail, yes.

19 Q The vehicle was pushed up against the
20 guard rail and the guard rail was bent?

21 A Yes.

22 Q Now, when you got to the scene of the
23 accident, can you tell me where the other cars were that
24 were involved in this?

25 A The Weiner vehicle was turned around almost

1 facing the opposite direction and into the eastbound lane.

2 Q That was the Weiner vehicle?

3 A Yes.

4 Q The bus was in back. When we seek where
5 the bus was with respect to the rail, this is all in the
6 lane that the bus was in; the westbound lane?

7 A Yes.

8 Q No part of it was ever in the eastbound
9 lane?

10 A No.

11 Q And where was the vehicle of the Stones,
12 do you recall at all?

13 A Approximately 50 to 75 feet behind the
14 bus in the westbound lane.

15 Q That is the Stone vehicle which had been
16 hit by the Weiner vehicle?

17 A Yes.

18 Q Incidentally, when you got there, did the
19 Weiner vehicle have skis on top of it? Any skis?

20 A There was skis before the accident.

21 Q And when you got there, was there any skis
22 imbedded in the front of the bus?

23 A Yes, there were.

24 Q And did you take them out and throw them
25 to the ground?

1 A I did not, somebody else did. We have a
2 picture of that.

3 MR. LEVITT: Is that the picture of the
4 bus, your Honor?

5 THE COURT: Yes, but you can't see much.

6 THE WITNESS: That's not the --

7 MR. LEVITT: What is that, that's not
8 the one?

9 Q (By Mr. Levitt) Officer, does this
10 photograph fairly depict the position of the bus when you
11 arrived at the scene of the accident?

12 A I have to look at it.

13 MR. LEVITT: May I, if your Honor please

14 THE CLERK: Yes, Sir.

15 THE WITNESS: Yes.

16 MR. LEVITT: May I offer this photograph
17 in evidence, if your Honor please.

18 THE COURT: Defendant Greyhound Exhibit D.

19 MR. SPATT: No objection, your Honor. I
20 think it is in evidence though, all right.

21 MR. LEVITT: Is that photograph in
22 evidence? If it is I withdraw it.

23 MR. CAMERON: Here it is, the same one.

24 THE COURT: It is in.

25 MR. CAMERON: Same as Plaintiff's 1-A.

THE COURT: 1-A?

MR. CAMERON: Yes.

THE COURT: Well then I will withdraw
that Exhibit.

MR. LEVITT: Yes, I withdraw it.

THE COURT: Using Exhibit 1-A, then.

Q (By Mr. Levitt) When you got there was
the bus driver sitting in his seat?

A Yes he was.

Q And tell me Officer, was he injured?

A Yes, he was.

Q Was he taken to the hospital by ambulance?

A Yes, he was.

Q And did you see him in the hospital subse-
quently?

A Yes.

Q Was he, do you know, was he under sedation?

A He was operated on.

Q He was. And you saw him right after that
operation?

A Yes.

Q Was he in pain?

A Yes.

Q Did you inquire about witnesses to the
accident; is that part of your job?

1 A That is part of the job.
2 Q Did you get the name of any witnesses?
3 A Just the three vehicles, that's all.
4 Q Did you get the names of the passengers
5 in the bus?
6 A Yes, all of them.
7 Q Did you make that part of your record?
8 A Yes.
9 Q Record open to anybody?
10 A Yes.
11 Q Tell me, you were asked a question about --
12 did you give out any fines, any violations, I think was
13 the question of law, and you were asked did you give out
14 any tickets?
15 A Yes.
16 Q Did you make some conclusion, did you
17 come to some conclusion as to what violations of law had
18 occurred?
19 A Yes.
20 Q And did you enter that on your report?
21 A Yes.
22 Q And did you enter upon answering, Counsel's
23 getting up to object, did you make any -- did you come to
24 any conclusion whether the Greyhound had violated any
25 statute?

1 MR. ZAWACKI: I object to that, your
2 Honor, that is precisely what we have the jury
3 here for. We don't -- the Officer is not the
4 13th member of the jury.

5 THE COURT: Yes, I think the objection
6 as to the Officer offering an opinion to the jury
7 on the basis necessarily of hearsay to him and of
8 his observation of the vehicles at the time he got
9 there --

10 MR. LEVITT: May I have your Honor's
11 indulgence?

12 THE COURT: Yes.

13 Q (By Mr. Levitt) When you were asked
14 about your interview with Mr. Brown at the hospital and
15 you -- did Mr. Brown tell you as soon as he saw this car
16 coming over on his side, he pulled as far as he could to
17 his side of the road?

18 A Yes, I think so.

19 Q Did he tell you he was practically stopped
20 when the accident occurred?

21 A Yes.

22 Q Did he tell you he was thinking of
23 taking his bus over the bank because he could see it coming?

24 MR. SPATT: I object to what anybody was
25 thinking, your Honor.

1 MR. LEVITT: That was told.

2 THE COURT: You see, none of this, the
3 witness is being asked, called upon him to tell
4 you anything except what he was told.

5 MR. LEVITT: Correct.

6 THE COURT: Whether he was true, false,
7 we have no evidence. All we know is that's what
8 he was told. If you accept the Sergeant's testi-
9 mony as true to his own recollection.

10 Q (By Mr. Levitt) Did he tell you he tried
11 to get over the guard rail as far as possible to come to a
12 complete stop?

13 A The way I remember it he said he got over
14 as far as he could and tried to get over as far as he could.
15 He had gone through his mind about putting the bus over the
16 bank.

17 Q You testified to that at this motor vehicle;
18 didn't you?

19 A Yes.

20 Q Officer, I want to show you these photographs.

21 MR. LEVITT: What would your Honor prefer
22 I do; there are about six, seven, eight.

23 THE COURT: Are they the same ones? Do
24 you know whether they duplicate ones or any in
25 evidence?

1 MR. LEVITT: I will separate the duplicates
2 if it's all right with your Honor. I don't think
3 any - I know these are not duplicates. This may
4 in part be.

5 THE COURT: If it's another I just want
6 to avoid putting in two prints from the same
7 negative.

8 Q (By Mr. Levitt) Officer -- I will keep
9 this out then, because there is one there almost alike.

10 Officer, I show you these photographs and
11 do they show the physical condition of the road, not taken --
12 another time, not the snow on the ground of the place, but
13 the physical condition of the road at the time of the
14 occurrence?

15 A Yes, they do.

16 MR. LEVITT: May I offer those in evidence,
17 if your Honor please.

18 THE COURT: Four pictures. Defendant's
19 Exhibit D through D-5 marked for identification.

20 (Whereupon photographs are received and
21 marked Defendant's Exhibit D through D-5 for
22 identification by the Clerk of the Court)

23 THE CLERK: So marked, your Honor.

24 THE COURT: Are they dated?

25 MR. LEVITT: I don't believe so.

1 MR. ZAWACKI: - 3-8-71, Moreau

2 MR. LEVITT: Are they -- 3-8-71, Moreau

3 Studio.

4 MR. CAMERON: I have no objection, your

5 Honor.

6 MR. ZAWACKI: Can I just ask a question

7 or two about those photographs?

8
9 VOIR DIRE EXAMINATION

10 BY MR. ZAWACKI:

11 Q On two of these photographs the guard rail
12 is partially knocked down, see that?

13 A Yes Sir.

14 Q Is that the spot where the bus was?

15 A Yes.

16 Q Is that the way the guard rail looked? I
17 want to know if you know this or not; is that the way the
18 guard rail looked, the way it is shown in these three
19 pictures?

20 THE COURT: At the time he reached the
21 scene of the accident.

22 Q (By Mr. Zawacki) When you got there,
23 do you know that? I don't want you to guess about it.

24 Is that the way it looked or not?

25 A I couldn't really tell, the bus was in the

1 way.

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2 MR. ZAWACKI: All right. I have no
3 objection.

4 THE COURT: Which guard rail is that?

5 MR. ZAWACKI: The side the bus would be
6 on, your Honor; is that right?

7 THE WITNESS: Yes.

8 MR. ZAWACKI: I have got no objection
9 with the qualification, it is the next day.

10
11 CROSS-EXAMINATION

12 BY MR. LEVITT: (CONTINUED)

13 Q Just let me - was the bus up against the
14 place where this guard rail is bent when you got there?

15 A Yes.

16 MR. SPATT: May I see the photographs,
17 please?

18 MR. LEVITT: Sure.

19 THE COURT: Which one is that?

20 MR. LEVITT: I now am missing some.

21 THE COURT: Which is the one that shows
22 the guard rail at the point where you said the bus
23 was located?

24 MR. LEVITT: A number of them do, Judge,
25 a number of them do.

1 THE COURT: I think you said six before.

2 MR. LEVITT: Did I say six?

3 MR. SPATT: Could you please point out to
4 me where the pictures show a guard rail?

5 MR. LEVITT: Yes.

6 MR. SPATT: I have no objection your
7 Honor, with that qualification.

8 THE CLERK: Received, your Honor.

9 THE COURT: You all recognize these are
10 daylight pictures, full daylight pictures taken the
11 following day.

12 THE CLERK: Now Defendant's Greyhound
13 Exhibit DD1-A through D-5 in evidence.

14 (Whereupon photographs are received and
15 marked Defendant's Greyhound Exhibits DD1-A through
16 D-5 in evidence by the Clerk of the Court.)

17 MR. LEVITT: Shall I go ahead, Judge?

18 THE COURT: Yes.

19 MR. LEVITT: I'm sorry, I thought your
20 Honor was engaged --

21 Now with his Honor's permission, it might
22 be, it might be clarified if you put directions
23 on those pictures. I have a ballpoint, not a --

24 THE CLERK: Fine --

25 Q (By Mr. Levitt) Would you first mark

1 on Defendant Greyhound Exhibit D-4, 5, 3, 2, 1 and D, first
2 the direction which is north; just mark east and west on
3 there.

4 Would you be kind enough to finish this
5 before the jury sees them, Judge.

6 THE COURT: Oh, certainly.

7 Q (By Mr. Levitt) Would you be kind enough
8 to put an X, showing the guard rail along side of where the
9 bus was. The Greyhound bus when you got there.

10 Just put a G, that would be easier, G for
11 Greyhound along side the guard rail.

12 Yes, where the Greyhound was.

13 A Where it was positioned?

14 Q Where it was positioned.

15 MR. SPATT: I am going to object to putting
16 any G where a bus is supposed to be positioned if
17 there is supposed to be any meaning to it. What
18 part of the bus -- if he puts any front, side, the
19 right, the left.

20 Q (By Mr. Levitt) All right. Put the G
21 showing where the front right-hand side of the bus was.

22 THE COURT: Right-hand corner.

23 Q (By Mr. Levitt) Right-hand corner of the
24 bus was when you got there. Okay, would you do that on all
25 of them, please.

1 MR. ZAWACKI: Your Honor, shouldn't the
2 witness be advised he is not under compulsion to do
3 that?

4 THE COURT: Oh, certainly if you can't do
5 it with confident recollection that you are doing
6 it, right then, say so and don't do it.

7 THE WITNESS: There is one that I can't
8 really put --

9 MR. LEVITT: May I have your Honor's
10 permission now to give these to the jury?

11 MR. CAMERON: If it please the Court,
12 may they also look --

13 THE COURT: I'm sorry?

14 MR. CAMERON: Offered other pictures in
15 evidence and the jury didn't have a chance to see
16 the pictures of the Weiner -- the wheel -- that
17 would be Defendant's BB-1 through 6.

18 MR. LEVITT: That's this, Judge.

19 THE COURT: Yes. May I see them?

20 MR. SPATT: Can I see the photographs?

21 MR. LEVITT: Of course.

22 MR. SPATT: Your Honor, before the jury
23 sees these photographs can I get a clarification
24 what that G is supposed to represent; is the right
25 front corner of the bus as it appeared when he

1 came on the scene or is it --

2 THE COURT: That is all he can testify to.

3 (Whereupon the subject pictures are shown
4 to the jury.)

5 MR. LEVITT: Thank you.

6 THE COURT: Yes, Mr. Levitt.

7 MR. LEVITT: I have nothing further.

8 MR. SPATT: I have a few questions. Do
9 you want to do that now or after lunch?

10 THE COURT: It is not lunchtime t.

11 MR. SPATT: I thought I'd try. Can't
12 blame a guy for trying.

13
14 REDIRECT EXAMINATION

15 BY MR. SPATT:

16 Q You told Mr. Zawacki in answer to a question
17 that you put down somewhere on the police report skidding on
18 a part of the Weiner vehicle; is that correct?

19 A Yes.

20 Q Is that what you said? Well, you also
21 have been asked certain questions that came out of your
22 motor vehicle hearing where under oath in November of 1971
23 you said you were told by the bus driver that the Weiner or
24 Weiner vehicle went out of control; is that correct?

25 A Yes Sir.

1 Q And when you put the word -- you didn't
2 write skidding anywhere in your handwriting, did you?

3 A No.

4 Q Just an entry among other entries for the
5 Weiner vehicle, not the other three, but you put all three
6 going straight, but under Weiner the one you put an X under
7 skidding; is that correct?

8 A That's correct.

9 Q Now would you tell the Court and jury is
10 there any box or any classification anywhere on this report
11 that you signed for losing control or not having control;
12 is there any place where you could check that?

13 A Not under that section, no.

14 Q In any section in that report is there a
15 place where you can put a check for losing control?

16 A Could be considered reckless driving.

17 Q Other than reckless driving which covers
18 a lot of things; is that right?

19 A Yes, it does.

20 Q By the way do you consider losing control
21 reckless driving, Sir?

22 A Depending on the circumstances.

23 Q Pardon?

24 A Depending on the circumstances.

25 Q All right. But other than that, there is

1 nothing on that report, no space where you can check losing
2 control; is that correct?

3 A That is correct.

4 Q Now, when you put skid after Mr. Brown, the
5 bus driver said the woman lost control, what was it your
6 intention when you put that skidding there. Can you tell
7 us that?

8 MR. ZAWACKI: The question assumes is it
9 intentional. Did he put something other than
10 skidding there.

11 MR. SPATT: Well, I'll ask that question.

12 THE COURT: Not as I understand the form
13 is one of those choice forms where one can choose
14 more than one or more things to describe some
15 element in the case. Now, he has checked skidded.
16 What were the alternatives to skidding at that
17 place.

18 THE WITNESS: There wasn't any.

19 THE COURT: What were the other things
20 that you could check in the box that includes
21 skidding?

22 THE WITNESS: Want me to go through all
23 of them?

24 THE COURT: Are there any others?

25 THE WITNESS: There is 12 of them in that

1 one section.

2 Q (By Mr. Spatt) Anything to go with losing
3 control?

4 A No, that's the nearest that comes to
5 losing control.

6 Q Tell us under oath now Sergeant, tell us
7 in your own words is that what your intention was to do
8 when you put down skidding?

9 A I couldn't say for sure.

10 Q Might be?

11 A Yes, it could be.

12 MR. ZAWACKI: What might be I will move
13 to strike that out, your Honor.

14 THE COURT: I think we have - you must
15 recall the Sergeant has not said that he was
16 present and saw the accident. And I do not think
17 the Sergeant testified that he saw any on his
18 examination of the roadway, that he saw any
19 evidences of skidding such as you sometimes see
20 on a roadway where you see black marks of the
21 tire tread. Saw nothing like that on the road.
22 Now that he has been able to tell us. So that
23 his checking of the word skidding must be based
24 on something else.

25 Q (By Mr. Spatt) Did any driver tell you

1 that the Weiner car skidded before this accident?

2 A No.

3 Q So you didn't see the accident, you saw
4 no evidence of skidding and no driver told you that there
5 was any skidding; is that correct?

6 A Yes Sir.

7 Q Now, will you take a look at the narrative
8 form, what is the narrative form of your police report; will
9 you tell the Court and jury what that is?

10 A That is the description of the accident
11 that we write in.

12 MR. SPATT: May I approach the witness
13 for a moment, your Honor.

14 Q (By Mr. Spatt) And your narrative form
15 takes one, two, three, four, five lines; is that correct?

16 A Yes Sir.

17 Q Type written?

18 A Yes Sir.

19 Q Signed by you?

20 A It is typed, my name is typed in.

21 Q You signed one of the documents, I'm sure.

22 A Yes.

23 Q That is the official police report record
24 of this accident?

25 A Yes.

1 Q Your narrative of what occurred; is that
2 correct? Your version of what occurred?

3 A Yes.

4 Q Is there one word of skidding in that
5 report?

6 A No Sir.

7 THE COURT: Read through the five lines,
8 the word skid is not used in those five lines.

9 THE WITNESS: No, it is not.

10 Q (By Mr. Spatt) And the top of the hill
11 where the point, where the accident occurred, is that 800
12 feet, Sergeant?

13 A Approximate.

14 Q That 800 feet, is it the same distance
15 that Mr. Brown, the bus driver, testified in your presence
16 that that's when he first saw the Weiner car or words to
17 that effect; is that correct?

18 A According to the motor vehicle hearing,
19 yes.

20 Q So as soon as that car came up over the
21 hill he saw it, according to the motor vehicle hearing; is
22 that correct?

23 A Yes Sir.

24 Q By the way, who was the owner of the
25 vehicle driven by Barbara Weiner, who was the owner of that

1 vehicle?

2 THE COURT: I believe that's been agreed
3 among --

4 MR. SPATT: No it's not come out yet,
5 your Honor, I didn't mention it.

6 THE COURT: I think it would best be to
7 substitute an agreement of Counsel. I believe it
8 has been agreed among Counsel that under the plead-
9 ings, the record owner of the Weiner motor vehicle
10 was Mr. Weiner, the husband.

11 Q (By Mr. Spatt) Now is your part of your
12 duties as a police officer investigating this accident in
13 the police form, was there a portion of the police record,
14 the official police record dealing with apparent contributing
15 circumstances in these words, just yes or no?

16 A Yes Sir.

17 Q Was it your duty as a police officer in
18 investigating a rather serious accident, you would classify
19 that as a serious accident; is that correct?

20 A Yes Sir.

21 Q To fill out this form with the occurrence,
22 contributing circumstances to this accident, was that part
23 of your duty?

24 A Yes Sir.

25 Q Did you do that as part of your duty?

1 A Yes.

2 Q Did you file an official form with the
3 police department with the filing of Queensbury?

4 A Yes, I did.

5 Q That was part of your duty to file that
6 official form; is that correct?

7 A Yes.

8 Q That form was filed by you, within a
9 short time of this accident; is that correct?

10 A Yes Sir.

11 Q When your memory was very clear as to what
12 you had investigated and what you had seen; is that correct?

13 A Yes.

14 Q And did you in filling out a current
15 contributing circumstance fill out --

16 THE COURT: Don't answer, proceed with
17 the question.

18 MR. ZAWACKI: May I interrupt the question
19 and again suggest to your Honor that Mr. Spatt is
20 again trying to substitute the --

21 THE COURT: I wouldn't know what he was
22 going to ask yet, but no, not ask the question in
23 the form which advises the jury.

24 MR. SPATT: I certainly will not, your
25 Honor.

1 Q (By Mr. Spatt) Did you throw out the
2 current contributing circumstances with respect to one
3 portion of these vehicles, yes or no?

4 A Yes.

5 Q And don't answer this question because
6 that is going to be an objection. With respect to what
7 vehicle or vehicles was that.

8 THE COURT: Well I think that goes too
9 far. All right, now I take it at this point there
10 is an objection to further questions addressed to
11 securing the opinion of Mr. Stannard as given at
12 the time. It would seem to me Mr. Spatt that it
13 would necessarily present to the jury the Officer's
14 opinion on the same facts that he has presented to
15 the jury and the jury is concerned with forming its
16 own judgment in the evidence and should it be
17 influenced by the side opinions.

18 MR. SPATT: I did this because of another
19 question. I am not going to go into what the
20 question was before by one of the other lawyers
21 which I think means the foundation for naturally
22 following whether there was in his opinion any
23 violation of law, that's why I asked those questions,
24 Judge.

25 Q (By Mr. Spatt) Now, let me direct your

1 attention Sergeant --

2 THE COURT: By the way, that would be the
3 same thing.

4 MR. SPATT: I didn't move fast enough.

5 THE COURT: Would you have issued any
6 summonses.

7 MR. SPATT: Judge I think you maybe
8 having some of the pictures, who has got -- one
9 picture close-up of the bus may I see that picture?
10 The one that Mr. Levitt wanted to put in twice, I
11 don't see it now. That's in evidence. Okay.

12 Q (By Mr. Spatt) Now I want you to take a
13 look at Plaintiff's Exhibit 1-A so that we don't have to
14 pass it around everybody again, that is a close-up shot,
15 showing the bus dead head-on with the driver visible behind
16 this wheel, very close to the bus, will you take a look at
17 that photograph, Sergeant.

18 And I specifically direct your attention
19 to the left front wheel of the bus, will you take a look at
20 that.

21 A Yes Sir.

22 Q Would you say that the left front wheel
23 of the bus was in a turning to the right position?

24 A Yes Sir.

25 Q Now Sergeant I am going to ask you this

1 question, see if you could answer it for me: Could you give
2 us an opinion based upon your accident investigation back-
3 ground and your common everyday knowledge as a driver of a
4 car, could you give us an opinion about how long before
5 this bus came to that left front wheel that was turned to
6 the right as it appears on that photograph; do you understand
7 my question?

8 A When did he turn the wheel?

9 Q Yes.

10 THE COURT: If he did.

11 MR. SPATT: If he did turn it.

12 Q (By Mr. Spatt) It is turned in that
13 picture, but if he did turn it, can you give us an opinion
14 based on looking at that photograph as to how soon before
15 this accident took place when that wheel was turned to the
16 right?

17 MR. ZAWACKI: That calls for the wildest
18 kind of speculation.

19 THE COURT: I think it is very speculative
20 because the accident was now all over and we have too
21 many variables for the Sergeant with any confi-
22 dence to single out one because of that and time it.

23 Q (By Mr. Spatt) Now Sergeant you made up
24 two diagrams and each of those diagrams say I believe or at
25 least one of them says - I sorry - Plaintiff's Exhibit 2 says

1 it: "The bus pushed back eight to ten feet.

2 That is your handwriting; isn't it

3 Sergeant?

4 A Yes, it is.

5 Q Now can you tell the Court and jury how
6 you came to a conclusion about something like that? That
7 the bus was pushed back eight to ten feet first, let's ask
8 that.

9 MR. LEVITT: If your Honor please, I
10 think these questions asked should have been on
11 direct. I think it is improper redirect.

12 THE COURT: No, I don't quite think this
13 type of question was asked but the question of the
14 bus having been pushed back eight or ten feet was
15 in evidence at an earlier point. I think the
16 question is now on what data that you saw at the
17 time and place of your arrival there, did you base
18 your statement that the bus had been pushed back
19 eight to ten feet.

20 MR. LEVITT: Thank you very much.

21 A As I stated before that was my thing that
22 I took at the time of the accident and I presumably put that
23 down to check it out.

24 THE COURT: But what was it based on,
25 do you know?

1 THE WITNESS: Marked in the snow, marks
2 on the front wheel, I really can't remember what it
3 was based on.

4 Q (By Mr. Spatt) Can you remember if it
5 was based on what the bus driver told you or someone other
6 than the bus driver, Mr. Stone or was it based on your viewing
7 the scene and getting to that conclusion from the physical
8 evidence?

9 A Could of been either.

10 Q You don't know which?

11 A No.

12 Q But in any event you put it in?

13 A Yes, I did.

14 Q Is it also fair to say that the impact
15 that caused this bus to be pushed back came from the left
16 corner, the left corner crossed by the Weiner car, by the
17 Weiner car if the bus is here? And the Weiner car came
18 on an angle, hit the bus in the left front corner with almost
19 the direct front of the Weiner car; is that correct?

20 A Yes Sir.

21 Q Would you then say that the thrust that
22 this bus would move if it moved would be back and to its
23 right?

24 A Yes it would be.

25 Q So that if the bus was pushed back eight

1 to ten feet, Sergeant Stannard, that would put it closer to
2 the guard rail than it had been at the point of impact; is
3 that correct?

4 A Could have happened that way.

5 Q Well if the impact and the force was on
6 the left front of the bus and the force was sufficient to
7 move the bus eight to ten feet, wouldn't it be fair to say
8 physically that that bus would be moved both backwards and
9 to its right closer to the guard rail?

10 A It depends on where the bus was at the
11 point of impact, how close.

12 Q I am not saying that we don't know where
13 it was at the point of impact. You didn't put that G on
14 any point of impact where it was on the picture, you don't
15 know where it was.

16 A That's right.

17 Q But you know where it ended up after it
18 had been moved eight to ten feet back; is that correct?

19 A Yes.

20 Q And is it fair to say that that moment
21 that movement of a car sufficient to move a 50,000 pound bus
22 loaded with 22 passengers and equipment, eight to ten feet
23 back would push the bus both backwards, to the right towards
24 the guard rail; isn't that correct on the angle that it hit?

25 A Yes.

1 Q So that when you saw that bus after the
2 accident, it already moved to where it had moved from the
3 impact; is that correct?

4 A Yes.

5 Q When this photographer came and took the
6 pictures of the bus near the guard rail, it is after the
7 eight to ten feet that we have been talking about; is that
8 correct?

9 A Yes.

10 Q But going back to our Plaintiff's Exhibit 2
11 in evidence, looking at this again, I am going to ask you
12 this: When you put that bus entirely on the road in that
13 first exhibit, did you intend to show where that bus was at
14 the point of impact?

15 MR. LEVITT: If your Honor please, he has
16 already answered that a number of times and Counsel --

17 THE COURT: No, this is asked to the
18 point of impact.

19 MR. LEVITT: Right, Judge, and I don't
20 want to say anything that might be harmful, but
21 he was asked what the rate of impact point meant,
22 how he determined it. He was asked those very
23 questions, he determined how he indicated point of
24 impact, then the point of impact on that was
25 indicated, point of impact from it.

asked.

A (By Mr. Spatt) Did you understand? Can

I ask the good Reporter to --

THE COURT: Now, let's move along.

MR. SPATT: I am almost through, your

Honor.

(Whereupon the pending question was read back by the Reporter.)

A I intended to place the bus off the road a little bit.

THE COURT: Now see, I think Mr. Spatt's question was, was the diagram intended to show the bus where it was at the moment of impact, where it was on the road as in terms of near the double yellow line, near the guard rail?

THE WITNESS: Yes.

Q (By Mr. Spatt) The answer to that is yes?

MR. LEVITT: He said near the guard rail, yes.

THE COURT: At the moment of impact he said was that supposed to show the location of the bus?

THE WITNESS: The first diagram is not

1 entirely correct. The point of impact is correct,
2 but as far as a position of the bus it is not
3 correct.

4 THE COURT: The position of the bus at
5 the moment of impact is what he is asking.

6 THE WITNESS: It is not correct on the
7 first diagram.

8 Q (By Mr. Spatt) The point of impact on
9 the first diagram is correct?

10 A On the long way. Not on this one.

11 THE COURT: That is Plaintiff's Exhibit 2.

12 MR. SPATT: Yes.

13 MR. LEVITT: C, if your Honor please is
14 the long one.

15 THE COURT: But this is Plaintiff's Exhibit
16 2.

17 Q (By Mr. Spatt) I am not asking about the
18 second diagram, that was the second one, right, Sergeant?

19 A Yes.

20 Q This is the first one?

21 A Okay.

22 Q Let's talk about the first one.

23 A Okay.

24 Q Is the point of impact on that, the point
25 of impact, forget the bus, is that intended to show where you

2 A Yes, it is.

3 Q That is the best of your ability; is that
4 correct?

5 A Yes, Sir.

6 Q Now, the bus where the bus is, in the first
7 diagram, is that intended to show the bus at the point of
8 impact rather than where you saw it, when you came after it
9 was pushed back eight to ten feet?

10 A No.

11 Q You said in answer to a question by one of
12 the other lawyers that when asked, what the Stone car, where
13 the Stone car ended up, you answered I believe, and tell me
14 if I am wrong, "Surprisingly 50 to 75 feet behind the bus in
15 the bus's lane."

16 Did you answer that that way?

17 A I can't remember if I did say "surprisingly,"
18 but it did end up 50 to 75 feet behind the bus.

19 Q Was that surprising to you that that
20 happened?

21 A No.

22 Q The bus driver who you talked to, and who's
23 picture, who's shown from the photograph and an injury to
24 the lower extremity, a foot or leg; is that correct?

25 A Yes.

1 Q He had no anger, so
2 that you know of?

3 A No.

4 Q He was fully conscious at all times when he
5 sat behind the wheel, when you got there, wasn't he?

6 A Yes, he was.

7 Q He was fully able to tell you in the best
8 he could how the accident happened. He had no difficulty
9 about speaking at all?

10 A No he did not.

11 MR. SPATT: I have no further questions,
12 your Honor.

13 MR. CAMERON: I am going to move very
14 quickly, your Honor, I don't think I will be more
15 than three minutes with this witness.

16
17 **RECROSS-EXAMINATION**

18 **BY MR. ZAWACKI:**

19 Q Officer, in speaking to Mr. Stone, the
20 driver of the Volkswagen, after the accident, did he tell
21 you that he stepped on the brake and attempted to stop to
22 being involved?

23 A No.

24 Q Did he tell you that he stepped on the
25 brake?

2 Q Did he tell you that he attempted to stop?

3 A Not that I can remember.

4 Q Both these diagrams I am referring now to
5 Exhibit 2 and Exhibit C, they are intended are they not to
6 be reconstructions of the accident?

7 A Yes.

8 Q This is in the diagram of what you found
9 when you got there that is reconstruction?

10 A Yes, Sir.

11 Q As far as the Stone vehicle, you don't have
12 those -- oh, excuse me. As far as the Stone vehicle is
13 concerned, Officer, did that vehicle ever drive off?

14 A No, it had been towed in.

15 Q Let me finish. Ever drive off its lane out
16 of its lane, it was in the eastbound lane, wasn't it, when
17 the accident happened?

18 A Yes.

19 Q Did it ever drive off to the right on the
20 shoulder and attempt to avoid this accident?

21 A Yes. I would imagine so, I mean.

22 MR. SPATT: I object to what he imagines,
23 your Honor. I ask that it be stricken.

24 THE COURT: I think the answer should be
25 stricken. Seems confused other than clarified.

1 vehicle on the diagram, didn't you?

2 A Yes.

3 Q After you spoke to Mr. Stone, wasn't it?

4 A Yes.

5 Q Now as far as those other two diagrams go,
6 No. 2 and C, the first diagram, the small diagram that you
7 made of it, you told us that you put the vehicles, you put
8 in the positions of the vehicle at the scene of the accident
9 on the day of the accident. That is what you said?

10 A Yes, it is.

11 Q The second longer diagram, the one you made
12 the next day; is that right?

13 A Yes.

14 Q And the first diagram you made up at the
15 scene of the accident you positioned the bus on the traveled
16 portion of the road, not on the shoulder; is that right?

17 A Yes, that's true.

18 Q On the second diagram that you make up, you
19 now have the bus, half on the road, half on the shoulder;
20 isn't that correct?

21 A Right.

22 Q What caused the bus from being totally on
23 the traveled portion over to halfway on the shoulder?

24 A I made a mistake.

25

2 the scene of the accident?

3 A I believe there was some men from Greyhound
4 to where it was towed to.

5 Q Did the men from Greyhound come to the
6 police station on that day of the accident?

7 A No.

8 Q Did you speak to anybody from Greyhound on
9 the day of the accident besides the driver?

10 A Not that I can remember, no.

11 Q You don't remember a station wagon with
12 Greyhound's name on it being at the scene?

13 A Not at that time.

14 Q At a later time?

15 A Next day.

16 Q Did you speak to him the next day?

17 A No, I don't believe I did.

18 Q Were they at the police station the next
19 day?

20 A Talked to one of our other officers, yes.

21 Q Was that before or after the second diagram
22 was made up?

23 A It would have been after.

24 Q Do you remember that?

25 A Yes, it had to be after.

2 second diagram?

3 A No, not exactly.

4 Q Isn't it a fact there were marks on the
5 roadway showing where the Weiner car came across from one
6 side to the other?

7 A Marks all over the roadway.

8 Q I'm asking you about marks of the Weiner
9 car?

10 A Marks I saw that went to the Weiner car, yes.

11 Q Weren't they marks going right across the
12 roadway from one side to the other?

13 A Well from where I presume they left the road,
14 the first time, the point of impact.

15 Q Were there marks showing the path of the
16 vehicle?

17 A There were marks, yes.

18 Q Were they skid marks?

19 A I am confused about skid marks, now.

20 Q All right, you are confused. Didn't the
21 bus driver tell you he saw that car skid?

22 A Says lost control.

23 Q I'm not asking about that. Didn't he
24 tell you that he saw that car skid?

25 MR. SPATT I will object to cutting the

2 about that, your Honor. I ask that he be permitted
3 to answer that question.

4 THE COURT: Well, he answered it. It
5 didn't appear to be responsive to precisely the
6 question Mr. Zawacki asked. He is entitled to the
7 question he asked if you can fairly answer it.

8 A I can't fairly answer it.

9 Q Didn't Mr. Stone tell you that the Volkswagen
10 driver, didn't he tell you the Weiner vehicle skidded?

11 A I don't think so, lost control.

12 Q I am asking you about skidding. Specifically
13 about skidding. So there is no question.

14 I want to know did Mr. Stone say anything
15 to you about skidding?

16 A Not that I can remember.

17 Q Did the bus driver say anything at all about
18 skidding?

19 A No.

20 Q All right. Did you find out after this
21 accident from talking to anybody at the scene of the accident
22 that the Weiner car was attempting to straighten out and get
23 back on the road?

24 A None.

25 MR. ZAWACKI Thank you, Sergeant.

177
MR. CAMERON: Just a few questions, your

Honor.

RECROSS-EXAMINATION

BY MR. CAMERON:

Q With regard to the two diagrams and the path you indicated dots as far as direction that the Stone vehicle took. As to whether it was closer to the middle of the road or right-hand side of the shoulder, you don't know; is that a matter of fact?

A Yes.

Q The Stone vehicle could have for all you know, gone off the shoulder and gone around the bus?

A Yes.

Q So that part of your diagram either first or second is not accurate as far as the path of the Stone vehicle?

A No, it's not.

MR. CAMERON: All right, thank you,

Sergeant. No further questions, your Honor.

RECROSS-EXAMINATION

BY MR. LEVITT:

Q Sergeant, in your first diagram you show the Greyhound bus at the point of contact directly up against

1 the end of the road on his right-hand side?

2 A Yes.

3 Q In the second diagram at the point of contact,
4 you showed the bus not only up against the right-hand side,
5 but past the road on this right-hand side, half on the shoulder
6 and half on the road at the point of contact; is that correct?

7 A Part of the bus was off the road, yes.

8 Q On its side?

9 A Yes.

10 Q And that you determined by the degree, I
11 think you called it, what was the term --

12 A I called it the point of impact.

13 Q That was determined by the degree though,
14 that was under the --

15 A Yes.

16 Q That is how you determined that it was off
17 its road partially on the shoulder?

18 A Yes.

19 Q Officer, isn't it a fact someone asked you
20 about the top of the hill, asked something about the bus
21 driver, saw the Weiner car when it was at the top of the hill,
22 came over the top of the hill. Isn't it a fact the top of
23 the hill is some 800 feet away from where this - from the
24 point of contact, -- that is unfair to you.

25 Let me ask you: Isn't it a fact the top of

3 || A That was Sunday.
1 the hill is some distance back from the point where the
2 accident occurred?

3 A 800 feet.

4 Q From the point where the accident occurred?

5 A Yes.

6 Q I see. All right, thanks.

7 Let me ask you this Officer: Is this a
8 fair, reasonable representation of the appearance of the side
9 of the bus when you got to the scene of the accident?

10 A Yes.

11 THE COURT: That is the Exhibit --

12 MR. ZAWACKI: 1-B, that is no exhibit, I
13 am going to offer it now, Judge, I offer this in
14 evidence.

15 THE COURT: Is that dated on the back?

16 MR. SPATT: Yes, this seems to be one of
17 the series of the photographs taken at the accident,
18 your Honor. Another one, this is not a duplicate
19 though, I have no objection.

20 MR. CAMERON: May I see it. No objection.

21 THE CLERK: Now Defendant Greyhound
22 Exhibit D in evidence.

23 (Whereupon a photograph is received and
24 marked Defendant Greyhound Exhibit D in evidence
25 by the Clerk of the Court)

1 Q (By Mr. Levitt) Now, you told us before
2 when you got there the front of the bus was pushed up against
3 the rail?

4 A Yes.

5 Q Would you look at 1-D and see if that
6 refreshes your recollection. Where was the side of the bus
7 and the rear of the bus, how far was the rear of the bus
8 when you got there?

9 A Rear is about - according to this - about a
10 foot, foot and a half.

11 MR. ZAWACKI: According to that, the
12 picture speaks for itself. We don't need the
13 police officer to look at it, the picture, and tell
14 us what that shows. I don't want it to lead to
15 something, Judge.

16 Q (By Mr. Levitt) Where was the side of
17 the bus when you got there?

18 THE COURT: The right side --

19 MR. LEVITT: Yes. right side, your Honor
20 it is right.

21 A Up against the --

22 Q (By Mr. Levitt) You were asked some
23 questions, Counsel used the pictures --

24 MR. SPATT: I said left front, obviously
25 in the left front.

3
1 Q (By Mr. Levitt) The car is hit in the
2 left front, would it go closer to the --

3 THE COURT: Guard rail.

4 Q (By Mr. Levitt) Guard rail, where the
5 wheels are turned to the right.

6 THE COURT: No, he didn't ask the question
7 in that form. Now you do --

8 Q (By Mr. Levitt) Where the wheels are
9 turned to the right, as in this photograph, and the wheels
10 are pointing as they were turned to the right and the car
11 was hit --

12 MR. SPATT: I have no objection to that.

13 THE COURT: Just a moment.

14 Q (By Mr. Levitt) -- front left, can you
15 tell us where the car, bus, necessarily would go or does it
16 depend on other factors?

17 A Depends on other factors in my judgment.

18 MR. LEVITT: All right, thank you, that's
19 all.

20 Q (By Mr. Spatt) Do you leave skid marks
21 on wet slushy road, Sergeant?

22 A No you don't.

23 Q Do you leave tire marks in snow?

24 A Yes.

25 MR. ZAWACKI: Your Honor, I object to that.

1 MR. CAMERON: Your Honor, "I object to this
2 line of questioning.

3 THE COURT: You are asking the witness
4 questions that really calls on him simply to state
5 matters of common knowledge. Not of observation.
6 I think if you wish to argue such things you may do
7 so.

8
9 REDIRECT EXAMINATION

10 BY MR. SPATT:

11 Q I am going to show you one other photograph
12 and that is completely clear, the road shows it completely
13 clear except for the sides. Is that the same road we are
14 talking about, Sergeant?

15 THE COURT: What is the date of the picture?

16 MR. SPATT: This picture is dated March the
17 22nd, 1971, your Honor.

18 Q (By Mr. Spatt) Is that the same road
19 leading to the same area that we are talking about?

20 A Yes, Sir.

21 Q Is that looking west, Sergeant?

22 A Yes.

23 Q That is the way that the bus driver would
24 look as he's approaching this place; is that right?

25 A Yes.

1 Q Is that the way the road looked at the time
2 other than weather conditions?

3 A Yes.

4 MR. SPATT: Offer it in evidence.

5 MR. ZAWACKI: For what purpose. I
6 object.

7 MR. CAMERON: I also object. It is
8 improper redirect.

9 THE COURT: I think we perhaps need another
10 picture of the road.

11 MR. SPATT: Without anything on it?

12 THE COURT: We need the --

13 MR. ZAWACKI: Your Honor, if he wants to
14 introduce the picture, show there is no skid mark
15 on the road, I will conceive the picture taken a
16 week later shows no skid marks.

17 MR. SPATT: The purpose of my offer is to
18 let them see the road free of any slush; free of
19 any vehicles or anything. Just the road, that is
20 the way the road looks.

21 MR. LEVITT: I think I have pictures
22 incidently on that.

23 THE COURT: I think the March 8 pictures
24 are pretty complete on that and I am not sure that --

25 MR. LEVITT: Your Honor is correct.

1 THE COURT: About the post-verdict
2 the conditions are definitely not as they were, he's --

3 MR. SPATT: You want to take a look at this
4 picture too?

5 THE CLERK: Marked Plaintiff's 3 for
6 identification.

7 THE COURT: Which way are we looking, do
8 you know?

9 MR. SPATT: West, your Honor, the way the
10 bus was going. May I have another reason for showing
11 that?

12 THE COURT: Yes, certainly.

13 MR. SPATT: Shows the view of the bus
14 driver as he's approaching this area from a view
15 further back than any other photograph.

16 THE COURT: Well the only thing I saw
17 that it shows with clarity, it has been referenced
18 here to the land falling away on one or the other or
19 both sides of the road. I think it shows that
20 perhaps somewhat more clearly than any of the
21 other pictures that we have seen and it would as
22 long as you can locate that, what is the schools,
23 slow down sign --

24 MR. LEVITT: Schools, slow down lane.

25 THE COURT: As long as you guide yourselves

1 by that school slow down sign, I suppose it would
2 give us some idea of the gradient of the hills.

3 MR. LEVITT: I am sorry, Counsel, I think
4 it is improper redirect, but I have no objection.

5 THE COURT: I think for these usages, it is
6 all right, but I think in looking at this one --

7 Members of the jury, this is really more or
8 less a typographical map.

9 MR. SPATT: Yes, Sir.

10 THE CLERK: Now, Plaintiff's Exhibit 3 in
11 evidence.

12 (Whereupon a photograph is received and
13 marked Plaintiff's Exhibit 3 in evidence by the Clerk
14 of the Court.)

15 MR. SPATT: No further questions of the
16 Sergeant.

17 THE COURT: Content, gentlemen?

18 MR. CAMERON: I have no questions, your
19 Honor.

20 THE COURT: Sergeant, go back to Queensbury.
21 He's got late duty tonight. All right Sergeant,
22 you are excused.

23 (Witness excused.)

24 (Whereupon the luncheon recess was taken
25 at 1:25 P.M. and the following proceedings were

1 resumed our work on this whole issue [unclear]
2 MR. CAMERON: Your Honor at your instruc-
3 tions when the case started we were given signed
4 statements by Mr. & Mrs. Weiner, but a reading of
5 the motor vehicle hearing that indicates that
6 affidavits were submitted by both.

7 THE COURT: At the date of?

8 MR. CAMERON: On the November hearing.
9 That affidavits were submitted by both Mr. & Mrs.
10 Weiner marked as evidence, they were affidavits.
11 I want to find out were they the same affidavits
12 as the signed statements that we already received;
13 if not, I would like copies of those affidavits
14 that were submitted at the motor vehicle hearing.

15 MR. SPATT: I do not have a copy of any
16 of those documents nor have I the motor vehicle
17 hearing, nor the exhibits, nor any affidavits.

18 MR. ZAWACKI: Apparently we are going to
19 get them now.

20 MR. LEVITT: I had them at one time,
21 copies -- I would be glad --

22 THE COURT: I am sure they wouldn't deny
23 they are signatures.

24 MR. LEVITT: I think these are the same
25 thing; that we had that they sent in.

1 MR. SPATT: I got honesty of collusion
2 records from the Motor Vehicle Bureau. I got
3 nothing back. They didn't even come back.

4 MR. LEVITT: Judge, if you want me to
5 look --

6 MR. SPATT: Excuse me, the answer was
7 they destroy them after three years, that was the
8 answer supplied to the subpoena, your Honor.

9 MR. LEVITT: You want me to look through
10 my file?

11 THE COURT: If you can dig it out, if you
12 will. But look, we must get ahead with the case.

13 MR. LEVITT: I will look later.

14 MR. ZAWACKI: Will you give them up, you
15 said you had them.

16 MR. LEVITT: I said I saw them and I said
17 I will look for them.

18 MR. ZAWACKI: We are playing games.

19 MR. LEVITT: Judge, I haven't played
20 games in this all the time.

21 THE COURT: No, I understand these were
22 the Weiner affidavits.

23 MR. LEVITT: His own client's affidavits.
24 He is asking me to produce.

25 MR. ZAWACKI: I don't have them, I never

that. And I at the same time
2 THE COURT: Hardly take that tone to
3 other Counsel in the case. Please do not do so
4 again. Would you get the innocent jury.

5 (Whereupon the jury enters the courtroom
6 at 2:49 P.M. and the following proceedings are
7 resumed within their presence:)

8 MR. SPATT: May I proceed, your Honor?
9 I would like to call Barbara Weiner to the stand,
10 please.

11
12 B A R B A R A W E I N E R, being duly sworn, according to
13 law, testifies upon her oath as follows:

14
15 DIRECT-EXAMINATION

16 BY MR. SPATT:

17 Q Good afternoon, Mrs. Weiner.

18 A Good afternoon.

19 Q You will have to speak up even with the
20 microphone. Is this the first time I am talking to you
21 in your entire life about this accident?

22 A Yes, it is.

23 Q Where do you live now, ma'am?

24 A In Huntsville, Alabama.

25 Q Where did you live on March 7, 1971?

2 Q And with whom did you live at that time?

3 || A My husband and my two children.

4 Q Those are Alan and Julie; is that correct?

5 A Yes, Sir.

6 () Now, were you a housewife at that time,

7 Mrs. Weiner?

8 A Yes, and I worked part-time.

9 Q I'm having trouble hearing you. I don't
10 know if the jury is.

11 THE COURT: If you will sit forward and
12 talk into the mike or pull it toward you, or both.

13 A I worked part-time.

14 Q Where did you work at that time?

15 A At an electronics company in Parsippany.

16 Q What was the name of the company?

17 A Boonton Electronics.

18 Q What type of work did you do at that time?

19 A I was inventory control clerk.

20 Q You say that was part-time?

21 A Yes, Sir.

22 Q How old are you, Mrs. Weiner?

23	A	31.
----	---	-----

24 Q How old were you in March of 1971?

25 || A 28.

THE WITNESS: 27.

THE COURT: Let's state it on the low side.

Q (By Mr. Spatt) Now, at that time, there was an accident. What kind of a car were you in at that time?

A '64 Chrysler Imperial.

Q And who owned that car?

A My husband did.

Q Do you remember whether you bought that car new or used?

A It was a used car.

Q Would you remember when you bought that car or your husband bought it?

A In '68.

Q Now where were you going at the time, you have to wait until I get through with my question.

A Sorry.

Q Otherwise it is going to be complex, he can only take one of us. Where were you going at the time of the accident?

A We were on our way to Vermont.

Q What was the purpose of that trip?

A A skiing vacation.

1 Q All four of the members of the family?

2 A Yes, Sir.

3 Q Do you remember -- withdraw that.

4 Did you leave your home from Parsippany,

5 New Jersey?

6 A Yes, Sir.

7 Q And about what time did you leave that day?

8 A Some time in the afternoon. I don't

9 remember what time.

10 Q And when you left, who was driving the

11 1964 Imperial car that you were going in?

12 A My husband was.

13 Q Now, did there come a time before this

14 accident when you changed places with your husband?

15 A Yes.

16 Q And did you then become the driver of the

17 vehicle?

18 A Yes, Sir.

19 Q Do you remember where on the trip you

20 changed places?

21 A Not right now, I don't.

22 Q When you say "not right now," do you have

23 any recollection of where that was?

24 A I think it was on the Northway, but I

25 couldn't be sure.

1 THE COURT: Was it past Albany?

2 THE WITNESS: I don't know, your Honor.

3 Q (By Mr. Spatt) Now when you changed
4 places and you became the driver, did you know when that was
5 with relation to an accident, how much time before that?

6 A No.

7 Q Minutes, hours?

8 A No.

9 Q Do you have any recollection whatsoever of
10 this accident?

11 A None.

12 Q Do you recall changing places with your
13 husband?

14 A Yes, I do.

15 Q Well, what do you recall happened after
16 your changed places with your husband?

17 A I remember driving and that's about all.

18 Q What is the next recollection you have?

19 A Being in a hospital and the doctor telling
20 me about what happened and the conditions of the other
21 people in the family.

22 Q How long after the accident was that when
23 you had your next recollection?

24 A I think it was Tuesday, but it was just
25 guess.

1 you changed?

2 A My husband wasn't feeling well and he thought
3 it would be better if I drove.

4 Q Would it be fair to say that normally he
5 would have driven the entire trip?

6 A That's correct.

7 MR. SPATT: I have no further questions of
8 the witness.

9

10 CROSS-EXAMINATION

11 BY MR. ZAWACKI:

12 Q Did you say that you had never been to the
13 office of Mr. Spatt?

14 A We were there one time to drop my son off.

15 MR. SPATT: Well, I will object to that.
16 She not only didn't say it, but I never asked her.

17 THE COURT: I don't think it was her
18 testimony. It was a little different. That she
19 had never spoken to Counsel earlier.

20 Q (By Mr. Zawacki) In other words, you have
21 been to the office but you never spoke to Mr. Spatt?

22 A That's correct.

23 Q When you went to the office who did you
24 speak to there?

25 MR. SPATT: I object to that.

3 || MR. LEVITT: I join in that objection.
1 MR. LEVITT: If your Honor please I object

2 to that as immaterial. Impuning his own client.
3 Impuning his cross-examination; his own client;
4 trying to impune.

5 THE COURT: Was that position taken?

6 MR. SPATT: Yes, it was your Honor.

7 MR. LEVITT: He represents her.

8 THE COURT: The deposition was taken.

9 Q (By Mr. Zawacki) Deposition was taken in
10 the court house; wasn't it?

11 A Yes.

12 Q How many times have you been to the office
13 of Mr. Spatt?

14 A Just that one time.

15 Q When you were at the office with Mr. Spatt
16 just that one time, did you speak to anybody there?

17 A No.

18 Q And what did you do, open the door, walk in
19 and walk out?

20 A We walked in and we left my son there and
21 we left.

22 Q Didn't say anything to anybody?

23 A Maybe "hello, we're leaving Alan here,"
24 something like that, but that's about it.

25 Q How is it you knew where to bring Alan?

1 A I believe my husband had spoken to Mr. Spatt,
2 but I don't know. I just went along for the ride at that
3 particular point.

4 Q Did your husband speak to Mr. Spatt or
5 didn't he?

6 A I don't know. I assume he did.

7 Q Do you know that I'm your lawyer; don't
8 you?

9 A Yes, Sir.

10 Q Did you send up an affidavit to the motor
11 vehicle hearing in November of 1971?

12 A At this point I don't remember what affidavits
13 I sent where.

14 MR. ZAWACKI: Do you have the affidavit,
15 Mr. Levitt?

16 MR. LEVITT: I have a copy.

17 MR. ZAWACKI: May I see it please.

18 Q (By Mr. Zawacki) I want to show you this
19 piece of paper; is this your affidavit, is this your signature
20 on here?

21 THE COURT: Is that a copy?

22 THE WITNESS: Yes, Sir. Yes.

23 Q (By Mr. Zawacki) Now, did you prepare
24 that all by yourself without your lawyer?

25 A I really don't remember. It is very

1 familiar, I know I signed it, but I don't remember if I wrote
2 it up myself, if my husband wrote it up. I can't imagine
3 that piece of paper stating this would need a lawyer to write
4 it up.

5 Q You were at this court house when your
6 husband's deposition was taken?

7 A I was at a court house, yeah.

8 Q Now, did you hire the law firm of Spatt
9 and Ball?

10 MR. SPATT: I will object to that question,
11 if your Honor please.

12 THE COURT: Will Counsel step up.

13 (Whereupon a conference is held at side bar
14 out of the hearing of the jury as follows:)

15 THE COURT: I must ask you for the purpose
16 of the line of questioning, Mr. Zawacki.

17 MR. ZAWACKI: Mr. Spatt raised the issue;
18 he asked this witness whether or not she's ever
19 spoken to him before. And she answered no, gave a
20 certain impression. I think I am entitled since
21 he's called her as his witness, she was cooperative
22 to him, not adverse. Not hostile, I think I am
23 entitled to inquire into the circumstances of that
24 answer.

25 MR. SPATT: He has inquired into that.

1
2 MR. ZAWACKI: Well, I'm thinking about
3 that, Judge.

4 THE COURT: About the post-verdict?

5 MR. ZAWACKI: Pardon?

6 THE COURT: Are you thinking in terms of
7 the post-verdict?

8 MR. ZAWACKI: No, I'm not, your Honor.
9 I'm thinking in terms of this cause of action.
10 Now, this cause of action of wrongful death is for
11 the benefit --

12 THE COURT: Is what?

13 MR. ZAWACKI: Is for the benefit of the
14 next of kin, Mrs. Weiner is the next of kin.

15 MR. SPATT: Keep your voice down when you
16 say that, Mr. Zawacki.

17 MR. ZAWACKI: And I think you should be
18 permitted to pursue this line of questioning. Now,
19 in order for Mr. Spatt to prove damages for the
20 wrongful death he must prove a monetary loss.

21 THE COURT: He hasn't gone into that.
22 That's what I thought he was going to call her for,
23 but he has not. And the other business, you see,
24 she's your client, and if you thought you could
25 get negligent exculpatory testimony out of her,

1 I think you would be entitled to do it.

2 If she's telling the truth, in order to
3 assist her, the child's grandmother in milking the
4 insurance company, well, we get into a whole different
5 area there.

6 I think whether there has been approach of
7 the insurance contract, if the covenant cooperates
8 and whether the carrier can walk off after judgment.
9 But I am not too sure that we can do it in this way
10 and during this trial.

11 I'm quite serious when I say to you that I
12 will not tolerate any dumbing of the insurance
13 company in this Court by collusive action, lying,
14 fabrication or anything else. But I do think that
15 we do have in this case, so far as the issues are
16 before this jury are concerned, to evaluate the
17 insurer and the issue of the liability.

18 Now, how we can get at that I don't know,
19 because there is an awkward necessity, you see, in
20 her being your client. I would think that to get
21 over an impossible problem of getting her to
22 exculpate herself from wrong doing and I think
23 automobile wrong doing, I think any line of
24 questioning directed to that is a hundred percent.
25 And if the only way you can do it is by treating her

1 as an adverse witness, THE COURT: What did it say?
2 with frightening care, we are going to get ourselves
3 into trouble, maybe we have now got the case, we are
4 going to have to blow this whole issue wide open.

5 I must say --

6 MR. ZAWACKI: I'm a bit surprised now
7 that Mrs. Weiner is allowed to testify on the
8 witness stand.

9 THE COURT: What?

10 MR. ZAWACKI: Has testified from the
11 witness stand that yes, she has been at the Office
12 of Spatt and Baughman.

13 MR. SPATT: To drop her son off who was
14 taking a physical examination and that's the purpose
15 that she dropped him, I never spoke --

16 MR. ZAWACKI: I don't know, I don't know
17 everybody who took a physical examination.

18 MR. SPATT: Physical examination by
19 another doctor.

20 MR. ZAWACKI: I don't know anybody ever
21 did.

22 MR. SPATT: Dr. Lawrence Kaplan did.

23 MR. LEVITT: I've been through this before,
24 Judge. I'm not making any comments on it. In
25 that that's my problem between them. But the cases

1 are clear if I may respectfully say this, that an
2 attorney, I have an defendant have had it, so I
3 know, I represent my insurance company, but the
4 client itself, is there any question of collusion
5 subsequent issue or prior issue, cannot be brought
6 up by me who represents my client.

7 THE COURT: I'm afraid so, during the
8 trial --

9 MR. LEVITT: I merely, your Honor looked
10 at --

11 MR. SPATT: She signed an affidavit, I
12 never saw it. Signed a statement for them very
13 soon after the accident which they gave me a copy
14 of. All it says, the same thing, I have no memory
15 of the accident. Coupled with the fact that I
16 proved independently how the accident occurred.

17 THE COURT: Is there any hospital record?

18 MR. ZAWACKI: It's on its way, your Honor.

19 MR. SPATT: Hospital record --

20 MR. ZAWACKI: Go ahead, do you have it?

21 MR. SPATT: No I don't have it, but I said
22 I would imagine it would have clarifying - it would
23 show some amnesia.

24 THE COURT: Usually would say so because --

25 MR. SPATT: I haven't got it.

1
2 damage, anything of that sort. Well, I don't want
3 a mistrial because we have enough problems without
4 that. And I at the same time -- I don't mean to
5 let you be done in.

6 MR. ZAWACKI: Your Honor, I intend to ask
7 the witness --

8 THE COURT: I see a difficulty here is --

9 MR. ZAWACKI: -- I think that -- I'm sorry --

10 THE COURT: Use his words carefully, you
11 didn't say you were impeaching his own witness, so
12 he said you were impeaching your own client.

13 MR. ZAWACKI: I don't know what that
14 means, Judge.

15 THE COURT: It is the best he could think
16 of on the spur of the moment, I thought.

17 MR. ZAWACKI: I would like to ask this
18 witness now, since I don't know what the implication
19 of Mr. Spatt's question was, "Have you ever spoken
20 to me," but maybe the implication is, maybe she's
21 spoken to her own attorney over and over; that is
22 the reason for disclaim of any knowledge. The jury
23 might get that implication, you haven't spoken to
24 me but certainly spoken to Zawacki.

25 THE COURT The difficulty, Mr. Zawacki,

1 in a way has to show her -- what her --
2 MR. CAMERON: What about the purpose of
3 my cross-examination? In view of the fact she is
4 an interested party, don't we have the right to
5 delve into certain medical background. All of a
6 sudden she has no memory until after the accident.

7 THE COURT: I think we have the hospital
8 records, rather competent evidence. It is the
9 other way of on her sworn testimony, this is what
10 the impeaching -- the only things I'm at now is that
11 we -- we sooner or later on the issue of damages are
12 going to get to the issue of who's the beneficiary
13 of the cause of action.

14 MR. ZAWACKI: Can't be avoided, Judge.

15 THE COURT: So I think you can show her
16 interest. In the outcome of the action, so that
17 from that he can argue to the jury that she had no
18 interest really in testifying to her own good manage-
19 ment of her motor vehicle.

20 MR. SPATT: Your Honor, I thought your
21 Honor said yesterday you were ruling that out of the
22 summation.

23 THE COURT: I was ruling out any of this
24 quoting language from the cases denouncing a cause
25 of action, et cetera. et cetera, et cetera.

4 11 res.
2 THE COURT: Or in summations.

3 MR. ZAWACKI: Your Honor, I have a good
4 idea what your Honor is saying, I intend to ask a
5 few more questions. I'll walk on air, I'll be very
6 careful with my questions.

7 MR. LEVITT: I'm just - I'm not arguing
8 the situation, I'm merely telling your Honor what I
9 think the situation is. If your Honor wants me to,
10 if your Honor shan't --

11 THE COURT: You have tried 54 negligents
12 for everyone that I have been involved in.

13 MR. LEVITT: Now, your Honor. I don't
14 think that we can go into the question of damages
15 and independent cause; that again would be impugning
16 the integrity of his own client. As a matter of
17 fact I'm not sure you have a right to raise the
18 question of his client's prejudice.

19 Even if he knew that was so, I'm not sure
20 he could.

21 THE COURT: I think we'll have to do that
22 one at a time. He's entitled to show interest.

23 MR. LEVITT: Again his own client.

24 THE COURT: Yes, because the matter is
25 itself impossible to try a cause of this kind without

1 the jury's knowing that there is insurance and they
2 do know.

3 MR. LEVITT: Not the question of insurance
4 I'm talking about, Judge.

5 THE COURT: That's what this whole case is
6 about.

7 MR. LEVITT: Insurance plays no part in
8 this at all. What I'm talking about is things and
9 the cases have so held of an attorney in anyway
10 impugning the integrity of his own client. He
11 cannot do that, because --

12 THE COURT: Have you cases on it?

13 MR. LEVITT: I can't find it, I won't
14 make any statement.

15 MR. ZAWACKI: I'm not impugning anybody,
16 I'm merely trying --

17 THE COURT: I think the general satis-
18 faction --

19 MR. LEVITT: Do you agree with me, you
20 cannot cross-examine your own client on issue?

21 MR. ZAWACKI: Yes.

22 MR. LEVITT: All right.

23 MR. ZAWACKI: Whatever you are saying I
24 agree with you, but I'm not cross-examining, I'm
25 not impugning her, I'm not doing anything of the sort.

3 || going to a lawyer to start a lawsuit or to get information
1 THE COURT: I think we do have to have
2 clarity. Let's wonder ahead as well as we can.

3 MR. LEVITT: May I say one thing to you:
4 This is purely on question of law. This is one ques-
5 tion, I'm going to object, I don't want him to hear
6 this, if I may.

7 MR. ZAWACKI: Can you excuse us for one
8 minute? They want the benefit of amnesia situation
9 and unless they show by doctors the amnesia was
10 accident competent cause for the amnesia, then in
11 fact I know in the Plaintiff's case, where they claim
12 amnesia and then the Plaintiff wants the same rights as
13 they have in a death action, because of amnesia, the
14 Courts have held that unless they show by competent
15 medical proof the accident was at some time the
16 producing cause of amnesia, they do not get the
17 benefit of amnesia use rulings.

18 THE COURT: That's more complete.

19 MR. LEVITT: I'm merely pointing it out.

20 (Whereupon the following proceedings are
21 resumed within the hearing of the jury:)

22 THE COURT: The reason for the side bar,
23 inevitably in the discussion we had one here with
24 further discussion, we do have to talk about things
25 which may never come in evidence and that's the

204 I show you this and ask
1 reason for doing it at the side bar. Because if
2 it turns out that the things under discussion do
3 not come into evidence, then of course it's important
4 that you should not have heard them because then
5 when you go to deliberate, you won't have to try to
6 remember what's evidence and what's not evidence.
7 Your recollection will be charged only with what
8 is in evidence and not burdened with what is not in
9 evidence.

10 All right, Mr. Zawacki.

11 CROSS-EXAMINATION

12 BY MR. ZAWACKI: (CONTINUED)

13 Q Mrs. Weiner, are you aware that you are
14 being sued by your daughter's estate?

15 A Yes.

16 Q Now, Audrey Weiner is the administratrix or
17 administrator of your daughter's estate?

18 A Yes.

19 Q Who's Audrey Weiner?

20 A She's my mother-in-law.

21 Q Are you aware that if this jury decides
22 that you were negligent in the operation of that --

23 MR. SPATT: If your Honor please, I am
24 going to interrupt counsel to object to that question.
25 I think it falls within what we have just discussed

1 and I think it is not admissible at this time.

2 THE COURT: No, I think he may ask the
3 question for the reasons that we discussed. That
4 is in order to show Mrs. Weiner's interest in the
5 outcome of the suit.

6 MR. SPATT: I respectfully accept from
7 that.

8 MR. LEVITT: I join in that objection.

9 THE COURT: I understand.

10 Q (By Mr. Zawacki) Mrs. Weiner, are you
11 aware that if this jury determines that you were negligent in
12 the operation of that car and renders a verdict against you
13 for that, a sum of money will have to be paid to your mother-
14 in-law?

15 A Yes.

16 Q And are you aware of what happens to that
17 sum of money after it's paid to your mother-in-law?

18 A No.

19 Q You don't know who gets it?

20 A No.

21 Q Did you think that your mother-in-law would
22 keep it?

23 A I never discussed it with her.

24 Q You didn't know that it would come back to
25 you?

1 MR. SPATT: I object to that, if your Honor
2 please.

3 MR. LEVITT: I join in that objection.

4 THE COURT: Well that is the question.
5 The jury will be instructed on that at the proper
6 time. But such a distribution as is involved in
7 such a case as this would normally go on the facts
8 with respect to this family, to the parents of the
9 child, not the mother to be exclusion, father of
10 course, but to the parents of the child.

11 MR. ZAWACKI: I have no further questions.

12
13 CROSS-EXAMINATION

14 BY MR. CAMERON:

15 Q Mrs. Weiner, I will ask you the question
16 again: Are you aware of who the individual was that
17 prepared that affidavit for you?

18 A It sounds like my writing. But I couldn't
19 swear to it.

20 Q Writing is typed up; is it not?

21 A Well, it's sounds --

22 THE COURT: Composition you mean? Is
23 that what you mean, your composition?

24 THE WITNESS: Yes.

25 Q (By Mr. Cameron) What is the date on that?

1 A It was notarized on October 15 of '71.

2 Q So about seven months after the accident,
3 correct?

4 A Yes.

5 Q And you have no independent recollection as
6 to you, yourself, personally typing that up or had it typed?

7 A If it was typed up my husband may have
8 taken it down to work. When the secretary types it up, we
9 have a typewriter, I may have typed it up.

10 Q But you don't recall?

11 A No.

12 Q Do you recall signing that instrument,
13 piece of paper?

14 A Yes, the words are familiar, I remember
15 signing it.

16 Q I show you this statement and I ask you
17 whether your signature appears at the bottom of that statement?

18 A That's my signature.

19 Q And did you read that statement prior to
20 signing it?

21 A Yes.

22 Q Would it be fair to say the sum and substance
23 of that statement was you didn't know anything about how the
24 accident occurred?

25 A Basically.

1 Q Now with regard to March the 7th, 1971, I
2 take it by your prior testimony that do you have recollection
3 of leaving your home in Parsippany, New Jersey?

4 A Yes.

5 Q Some time in the afternoon?

6 A Um hum.

7 Q Do you recall what roadway, the main roadway
8 you drove from New Jersey to New York?

9 A Route 46 to I guess Route 3 and then up to
10 the New York Thruway.

11 Q Would the Thruway be the main road that you
12 accumulate most of the mileage in New York?

13 A I would guess so.

14 Q Well, do you recall being in your husband's
15 car, driving along the Thruway?

16 A I guess so.

17 Q Do you recall passing through or going near
18 to Albany, New York?

19 A No.

20 Q But you do recall that prior to the happening
21 of this accident you exchanged seats with your husband and
22 took over the driving of the car; is that correct?

23 A Yes.

24 Q You do recall that?

25 A Yes.

1 Q Do you know how much time elapsed from the
2 time you left your home and your husband was driving the car
3 until you took over?

4 A I could guess.

5 Q Well, don't guess. What is your best
6 approximation?

7 THE COURT: Now, I think she said -- forget
8 it.

9 A No, I said I could guess.

10 Q (By Mr. Cameron) Don't guess, approximately,
11 how much time elapsed from the time your husband was driving
12 the car?

13 A Couple of hours.

14 Q And then you took over the wheel; is that
15 correct?

16 A Um hum.

17 Q I believe you told us before that your
18 husband was sick?

19 A He wasn't feeling well.

20 Q Wasn't feeling well. Do you know the
21 nature of what he had; headache, something wrong with his
22 stomach, something wrong with his pants?

23 A I thought he might be coming down with the
24 flu; it was just general ache all over feeling.

25 Q But do you recall that?

1 A Yes.

2 Q And how much time would you say elapsed from
3 the time that you took over the wheel up until the accident
4 occurred?

5 A I don't know.

6 Q Well, what time approximately did you leave
7 your house?

8 A It was after lunch. About 12, 1, maybe
9 2.

10 Q And you say your husband drove the car for
11 about two hours; is that correct?

12 A These are all guesses, about.

13 MR. SPATT: I'm going to object to guesses,
14 your Honor. I move they be stricken.

15 THE COURT: Yes.

16 A I don't remember exactly what time we left;
17 it was in the afternoon; I don't remember exactly where we
18 changed places; I know we changed places.

19 Q (By Mr. Cameron) Would you read that
20 signed statement, the second one that I gave you and I ask
21 you whether that refreshes your recollection as to what time
22 you left your home in New Jersey?

23 A It says around 2 P.M.

24 Q Does that refresh your recollection?

25 A If that's what it says.

2 please. I would like an answer whether it does
3 refresh her recollection or not.

4 THE COURT: What did it say?

5 THE WITNESS: It says, "Around 2 P.M. we
6 left our home."

7 THE COURT: 2 P.M.?

8 THE WITNESS: Yes.

9 THE COURT: Now, the question Mr. Cameron
10 asked was does that really refresh your recollection?

11 THE WITNESS: Not as to exactly what time
12 it was. I could remember it was the afternoon.

13 Q (By Mr. Cameron) Whose handwriting is
14 that statement in?

15 MR. SPATT: She didn't tell us.

16 A I don't know, I don't recognize it.

17 Q (By Mr. Cameron) It's not your handwriting?

18 A No, it's not.

19 Q But you did read it before you signed it?

20 A Yes, I did.

21 Q Now, I believe you told us before that you
22 took this trip later on, later occasions, the same route?

23 A Yes.

24 Q Had you taken that route before this
25 accident occurred?

1 A Once, twice before, once after.

2 Q So I take it from the various times that
3 you took this route before the accident or after the accident,
4 you are familiar with traveling time, distance; are you not?

5 A Not on that route, because we took it at
6 night and I was sleeping through the trip.

7 Q And how much time would it take you to take
8 this trip from Killington, Vermont, to Parsippany, New Jersey?

9 A Average is about five, six hours.

10 Q And based on your knowledge of the area
11 today, were you half-way through your trip, three-quarters,
12 what was the area you covered?

13 A Would guess more than half-way.

14 Q With regard to more than half-way, who did
15 most of the driving up until the accident occurred; you or
16 your husband?

17 A I think my husband did.

18 Q And do you recall just before the accident
19 occurred, whether your husband was awake?

20 A No.

21 Q I take it both children were seated in the
22 back seat of the car?

23 A Um hum.

24 Q Could you tell me the position where the
25 children were seated?

1 A NO, I CAN'T.

2 Q Were they moving around?

3 A No, they had seat belts on.

4 Q You don't recall what position they were
5 seated?

6 A No.

7 MR. CAMERON: May I have the last question
8 read back?

9 THE COURT: Yes, would you please.

10 (Whereupon the pending question was read
11 back by the Reporter.)

12 Q (By Mr. Cameron) Now I believe you told
13 us before the first recollection you have after this accident
14 was Tuesday; is that correct?

15 A I said that was a guess, I don't know what
16 day it was.

17 Q Well, we don't want you to guess, Mrs. Weiner.
18 We want you to testify to the best of your ability.

19 A I don't know what day it was.

20 Q Was it more than a week that you were
21 unconscious?

22 A No.

23 Q In any event, would it be fair to say that
24 within a week after the accident, you were conscious?

25 A Yes, Sir.

1 From that point on when you became
2 up until the present, do you have any missing gaps during that
3 period of time; do you recall what's going on since you became
4 conscious during the accident?

5 A Yes.

6 Q Before this accident, have you ever had a
7 situation where you had gaps; where you had difficulty
8 remembering?

9 A No.

10 Q And I take it with regard to this accident,
11 you sustained some injury as to some parts of your body; is
12 that correct?

13 A Yes.

14 Q Will you tell me what parts of your body
15 did you experience pain medically after this accident, when
16 you became aware of it?

17 A I really can't experience having any pain.

18 Q Did you have any injury to your head or
19 were you treated for any injury to your head?

20 A Yes.

21 Q And was that during the period of time that
22 you were in the hospital?

23 A Yes.

24 Q And what type of doctor treated you; did
25 he have a specialist?

2 Q Was any operative procedure performed on
3 you at the hospital?

4 A Yes.

5 Q I'm talking about with regard to injuries
6 to your head, talking about fractured now.

7 A Yeah, I was talking about fractured. With
8 regard to my head, I don't know. I had a concussion, I had
9 stitches in my head.

10 Q And after getting out of the hospital, I
11 take it -- Did you say you had some fractures?

12 A Yes.

13 Q What parts of your body?

14 A Arms and legs.

15 Q I take it as far as those you were treated
16 by an Orthopedist?

17 A Yes, Sir.

18 Q After getting out of the hospital, did you
19 continue to be treated by an Orthopedist for the fractured
20 bones?

21 A Yes, Sir.

22 Q What about the injury to your head; were
23 you treated by any physician after your discharge from the
24 hospital?

25 A No, Sir.

I take it for any injuries that you claimed to have sustained to your head you never went back, never treated by a medical doctor for whatever head injuries you sustained; is that correct?

A Except for having broken nose, cheek, that's it.

Q But aside from that?

A Right.

Q I take it again you never had any problem with memory lapses prior to this accident or after this accident except this one incident; is that correct?

A That's right.

Q I believe you have testified under oath, on at least two occasions, if not three, that you have no recollection with regard to this accident.

A That's correct.

Q And with regard to the lawsuit on behalf of Julie, your daughter, who retained the lawyer here, you and your husband collectively or your husband or your mother-in-law?

A I guess my husband discussed the possibility with Mr. Spatt.

Q Were the discussions between your husband and mother-in-law prior to the institution of retaining a lawyer?

A I don't know you'll have to ask my husband

1 that.

2 Q Was it your husband, the one that initiated
3 going to a lawyer to start a lawsuit or to get information
4 in regard to the possibility of a lawsuit?

5 A Yes.

6 Q But I take it you have or were not aware
7 what the consequences would be if there is a judgment entered
8 in this lawsuit against you and your husband; where that
9 money would go.

10 A No, no.

11 Q Was this more the concern with your husband
12 as opposed to you?

13 A Pardon me?

14 Q The concern of this matter, was it more
15 with your husband as opposed to yourself?

16 A Yes, sir.

17 Q You left it up to your husband; is that
18 correct?

19 A Yes.

20 Q Mrs. Weiner, did you ever testify or have a
21 deposition taken in New Jersey?

22 A No.

23 MR. CAMERON: I have no further questions.
24
25

1 CROSS-EXAMINATION

2 BY MR. LEVITT:

3 Q Mrs. Weiner, may I show you this and ask
4 you is this your signature?

5 A Yes, it is.

6 MR. LEVITT: May I offer this in evidence.

7 THE COURT: Mr. Zawacki, have you seen it?

8 MR. ZAWACKI: I haven't, I don't care if
9 she signed it.

10 MR. SPATT: I object to it on the grounds --
11 may I have a voir dire on this, your Honor?

12 THE COURT: Yes.

13 MR. ZAWACKI: I didn't think it had been
14 offered into evidence.

15 MR. LEVITT: Yes.

16 THE COURT: I think it was.

17 MR. LEVITT: I offered it in evidence when
18 he identified her signature.

19

20 VOIR DIRE EXAMINATION

21 BY MR. SPATT:

22 Q Mrs. Weiner, do you remember when your
23 husband was being examined before trial, when you were --

24 A Yes.

25 Q Do you remember a paper was given to him

1 like this paper, motor vehicle report?

2 A Um hum.

3 Q And do you remember that he said that he
4 got his information from the police?

5 MR. LEVITT: I object to that if your Honor
6 please, I object to it totally. Her signature being
7 on it, the papers are entitled to go into evidence.

8 THE COURT: Is this signed by Mrs. Weiner?

9 MR. SPATT: Yes, yes.

10 MR. CAMERON: Your Honor, I also join
11 Mr. Levitt. This goes to the impeachment --

12 THE COURT: No, I think you could ask her
13 what she derived the information from.

14 Q (By Mr. Spatt) Take a look at that docu-
15 ment.

16 MR. LEVITT: May I respectfully make this
17 make this statement: That's substance after it's
18 admitted in evidence, her signature being on it,
19 automatically entitled paper going into evidence.
20 She doesn't deny that she signed that paper, therefore
21 I respectfully point out to your Honor any explanations
22 so-called as to come thereafter, that's not a proper
23 voir dire on this statement.

24 MR. SPATT: Voir dire of what she signed,
25 what she knew, she signed what was in it that she

1 knew she signed.

2 MR. LEVITT: That's her signature.

3 THE COURT: The -- I believe that she
4 strictly was not asked whether she had read it
5 before she signed it.

6 Q (By Mr. Spatt) May I ask this first
7 before I ask that: Whose handwriting is that paper?

8 A It's mine, mine and my husband.

9 Q Which part of it is your husband's?

10 A The description.

11 Q The description of the accident is your
12 husband's?

13 A Um hum.

14 Q And did you read that paper before you
15 signed it?

16 A Yes.

17 Q And do you remember what was in there, do
18 you remember, is that from your personal knowledge what's on that
19 description?

20 A No, it was a form that had to be filled out.
21 In order to fill it out we got the information that we needed
22 and filled it out and sent it away.

23 Q Got the information after the accident,
24 obviously?

25 A Yes.

3 || Does have a recollection and she is making
1 Do you know that that information that's on
2 the description, do you know anything about it?

3 Only from what I have heard from other
4 people.

5 From what you heard from other people that
6 formed the basis of what's on that description; is that
7 correct?

8 A Yes, sir.

9 Q Does looking at that description now, look
10 at it and read it. Does that refresh your recollection as
11 to what is put down there as true from your personal knowledge,
12 not from what others told you?

13 A Not from my personal knowledge, no.

14 Q Does it refresh your recollection?

15 A No.

16 Q So that when you signed that document, that
17 part by your husband, you didn't know whether that was so or
18 not, did you?

19 A No.

20 MR. SPATT: I therefore object to that
21 motor vehicle report going in evidence.

22 MR. LEVITT: I offer it.

23 THE COURT: All right, Mr. Zawacki. No
24 objection?

25 MR. ZAWACKI: No objection.

the recollection of the event and reaches Brown.

1 THE COURT: It will be received.

2 MR. LEVITT: Thank you.

3 THE COURT: Defendant Greyhound Exhibit FN.

4 (Whereupon motor vehicle report is received
5 and marked Defendant's Greyhound Exhibit FN in
6 evidence by the Clerk of the Court.)

7 MR. LEVITT: May I have this please?

8 THE WITNESS: Yes.

9 MR. LEVITT: Thank you very much. Mrs.
10 Weiner, you say --

11 MR. SPATT: Excuse me one minute. There
12 are certain portions on there which are hearsay, not
13 admissible.

14 THE COURT: Now wait, let's be clear about
15 that. There are certain portions of that which may
16 not be hearsay, but as the witness just stated, the
17 portion of it which is descriptive of mechanics of
18 the accident, she has said is so far as she is
19 concerned hearsay. She does not vouch for what is
20 the information there, her husband and she gleaned
21 from an inquiry and put in the report --

22 MR. LEVITT: I know what he is referring
23 to. Of course I will keep that out.

24 THE COURT: Some things she knows.

25 MR. LEVITT: I will not of course - I

understand Counsel's objection.

1 THE COURT: May I see that?

2 MR. LEVITT: This part, I will not.

3 MR. SPATT: You are not offering that part
4 of it, Mr. Levitt?

5 MR. LEVITT: We'll cross out those items.

6 THE COURT: Item 20 in its entirety is not
7 offered.

8 MR. LEVITT: No, no.

9 THE COURT: Well, do something about that
10 somehow or other.
11

12 CROSS-EXAMINATION

13 BY MR. LEVITT: (CONTINUED)

14 Q Mrs. Weiner, may I read this part to the
15 jury, first --

16 MR. SPATT: Which part are you referring
17 to?

18 MR. LEVITT: History.

19 THE COURT: Narrative.

20 MR. LEVITT: "Vehicle No. 2 hit guard rail
21 on right, crossed road and hit vehicle No. 3," in
22 brackets "head-on."

23 "The vehicle No. 2, vehicle 2 hit vehicle 1
24 as he passed accident."
25

3 MR. CALKERSON: I object now.
1 Q (By Mr. Levitt) Did you get this from the
2 police, Mrs. Weiner?

3 A Well, I guess from my husband where he got
4 the information.

5 Your husband was the one?

6 A He helped me make it out, yes.

7 MR. LEVITT: Thank you, very much.

8 MR. SPATT: May I have that, please.

9
10 REDIRECT-EXAMINATION

11 BY MR. SPATT:

12 Q When you went to my office, did you see me,
13 Mrs. Weiner?

14 A I don't think so.

15 Q I know I didn't see you, did you see me?

16 A No.

17 THE COURT: Please, you are not a witness,
18 you may not make statements.

19 MR. ZAWACKI: I would like to cross-examine
20 him if he wants to keep doing that.

21 Q (By Mr. Spatt) Mrs. Weiner, did you drop
22 your son off to my office, was that the purpose of that visit?

23 A Yes, sir.

24 Q Do I then and did I then represent your son?

25 A Yes.

1 Q Was your son injured badly in this accident, ^{under correct me}

2 Mrs. Weiner?

3 A Yes, sir.

4 Q You have now been told by his Honor that if
5 a judgment is rendered in this Court by this jury that as one
6 of the two parents of this boy that you will be a beneficiary
7 of that; have you just been told that?

8 A Yes.

9 Q Was your husband, Mrs. Weiner, involved in
10 this accident in any way, shape, manner or form?

11 A He was a passenger.

12 Q Was he involved in this accident; was it
13 anything to do with his fault?

14 THE COURT: No, I think you mean did he
15 have anything to do with the operation of the motor
16 vehicle in time and place in question.

17 (By Mr. Spatt) Yes. Who was the driver?

18 A No, I was.

19 Q You have told this Court and jury and under
20 oath, you know that you are under oath; is that right?

21 A Yes.

22 Q And under oath when you took your examination
23 before trial; is that right?

24 A Yes.

25 Q That you know nothing about how this accident

1 happened; is that correct?

2 A That's correct.

3 Q Where were you on March the 16th, 1971?

4 A Glens Falls Hospital.

5 Q And what injuries did you sustain, tell the
6 Court and jury. Give us the details of what injuries. Tell
7 me all about what injuries you sustained, Mrs. Weiner.

8 MR. ZAWACKI: May I ask how that's relevant
9 in this case, your Honor?

10 MR. SPATT: I think its been opened up
11 before by Mr. Cameron in his attempt to show that
12 she was not injured that badly, that she could of
13 have some knowledge of this accident. That was the
14 line of his cross-examination. I think I am
15 entitled to go into it.

16 MR. LEVITT: I don't think the statement
17 should be made in front of the jury in any way on
18 explanations unless of course your Honor asks for
19 it.

20 THE COURT: I think simply - what the
21 question - what was her medical condition at the
22 time. Now have we got any competent evidence of
23 that? She can tell us to a certain extent, tell
24 us about her symptoms, but that's all she's competent
25 to tell us about, to the extent of her recollection

of them.

Q (By Mr. Spatt) What injuries did you sustain?

A I had a broken elbow and broken -- another broken bone in my left bone, broken ankle, broken nose, both legs were in casts, my left arm was in a cast. I had stitches in my head.

Q Where did you have stitches in your head?

A In the back I had some over here to --
(indicating) --

Q How many stitches did you have?

A I don't remember. I wasn't really concerned with the number.

Q At that time also, were you faced with a most tragic loss at that time?

A Yes, not only --

Q Not only faced with a most tragic loss, but did you have your remaining child very ill at that time?

A Yes.

Q Was he in a coma for some period of time after this accident?

MR. ZAWACKI: I'm going to object to the line.

THE COURT: Yes. This really has nothing to do with the inquiry that I suggested could be

1 appropriate.

2 Q (By Mr. Spatt) Now, you told this court
3 and jury on March 16, 1971, you were in Glens Falls Hospital;
4 is that correct?

5 A Um hum.

6 Q And at that time did a representative of
7 Mr. Zawackis, or his principal, come to see you in the
8 hospital?

9 A I can't recall.

10 Q Will you take a look at this statement
11 please or this paper which I have been furnished by
12 Mr. Zawacki Monday morning. I saw it for the first time
13 that morning. Will you take a look at that, please.

14 A Um hum.

15 Q What is the date of that statement?

16 A March 16, '71.

17 Q And did you sign that statement?

18 A Yes, I did.

19 Q Just like you signed the motor vehicle
20 report; is that correct?

21 A That's correct.

22 Q But this was nine days after the accident;
23 is that correct?

24 A That's correct.

25 MR. SPATT At this time, if your Honor please

1 THE COURT: Go and show it to the gentleman
2 on the other side.

3 MR. SPATT: Mr. Zawacki knows it's his
4 statement.

5 MR. ZAWACKI: Now when you say that, may I
6 have a voir dire on this, your Honor?
7

8
9 VOIR DIRE EXAMINATION

10 BY MR. ZAWACKI:

11 Q Did a representative of mine take this
12 statement from you?

13 A Somebody took this statement from me. I
14 don't know who is was, I don't recall.

15 Q Somebody from my office?

16 A I don't know.

17 Q Well, is there anything in here other than
18 what you have told us already?

19 A No.

20 MR. ZAWACKI: I object, but I don't see
21 how it's relevant. I don't know what Mr. -- what
22 the purpose of the offer is.

23 MR. SPATT: May I give you the X Rule of
24 Evidence that I am pursuing at this point.

25 THE COURT Well, if it isn't a prior

Inconsistent statement.

MR. SPATT: Your Honor, there is a statement made at a time when she had no motive at all; therefore it is admissible, despite the fact it is not contradictory to what she is saying now, in my humble opinion, your Honor. Especially in view of what has been brought out in this case up until now.

MR. CAMERON: Your Honor, I join that motion also on the grounds of self-serving.

MR. LEVITT: I join too.

THE COURT: Well, I don't see it serves any useful purpose. What does the law say on this?

MR. SPATT: Your Honor, may I be heard on this. I think it is a point of law I would like to discuss with your Honor and Counsel.

THE COURT: We will have a short recess, members of the jury.

(Whereupon the jury leaves the courtroom at 3:48 P.M. and the following proceedings are had in the absence of the jury.)

THE CLERK: Marked for identification, Plaintiff's 4.

(Whereupon a statement is received and marked Plaintiff's Exhibit 4 for identification by the Clerk of the Court.)

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THE COURT: Yes, sir.

MR. SPATT: If your Honor please, if a witness' testimony is attacked as a recent fabrication and if your Honor please, there had been a --

THE COURT: That's the one word I was stumbling on.

MR. SPATT: If your Honor please, I have had a little experience close hand with that particular Rule of Evidence and the law has widened tremendously to show what a recent fabrication here in my opinion is a classical examination. The woman says she has no recollection of the accident.

THE COURT: Never said anything other than that.

MR. SPATT: But your Honor allowed a motor vehicle report to go into evidence which gives a detail explanation of this accident.

THE COURT: But it's an admission.

MR. SPATT: Well if that's so, excuse me --

THE COURT: I let it go in, but, because it was not a judicial admission, I allowed the foundation of it to be shown. In other words, while it is admissible against her, and she never brought a bill to have it rescinded or exposed anything of that, is not a judicial -- but one

1 can show just as one can show when the president of
2 a corporation admits something about it that he was
3 relying on, the reports of others that the reports
4 of others on which he relied misled him. She is
5 in no different position, you see.

6 So she can explain it based not on knowledge
7 and must do so in this case. But on relations of
8 others -- so that much we have to be pretty clear
9 about. Otherwise it would seem if it were received
10 in evidence to be a statement that she did recollect
11 all about the accident was quite able to talk about
12 it. Actually it is the barest outline and not
13 inconsistent with any of the testimony that we have
14 from Mr. Stannard - told him what happened.

15 MR. SPATT: If your Honor please, there
16 has been the most devastating attack as a recent
17 fabrication of any activity ever seen in my practice.

18 THE COURT: You haven't seen attacks.

19 MR. SPATT: I don't practice in the Criminal
20 Court, your Honor. Just one minute, let me get
21 through, will you? I will tell you what the
22 attack of the recent fabrication is. The attack
23 come out with the interest of this lady in the
24 proceeding.

25 THE COURT I have seen no escape from

that because, you see, the recovery is for her and her husband, pecuniary loss here.

MR. SPATT: If your Honor please, that being so, her testimony was in effect attacked as a recent fabrication.

THE COURT: No it was not, it was attacked as any testimony can be attacked on the ground of interest. In a way, you see, what it amounts to is, is assisting the jury to the idea, she, her testimony should be evaluated in a way like that of a party. But as a party plaintiff. Because her interest would perhaps suggest a particular way of testifying.

Now we all have to recognize the awkwardness of such a situation as this in which if she had a recollection she would have testified about her own conduct whether it was prudent or negligent. And she would be ally to the fact that if she testified her conduct was prudent she would not be lying, but others might or might not be.

MR. SPATT: Exactly for that purpose that I say this statement is admissible.

THE COURT: When she testifies that she has no recollection of it at all, the jury I suppose is inevitably - well, they will - is she saying that rather than tell us about her conduct and the

1 argument in the jury room may start right there.
2 How far it will get I don't know. I don't think it
3 would get very far because no matter what the physical
4 events of the accident, in the absence of some
5 evidence of defective motor vehicle, hardly admit
6 much debate.

7 MR. SPATT: Except this, your Honor: You
8 just put your finger on it. I wasn't able to
9 articulate it, but you gave me the answer. The
10 jury has done now - she has been questioned about
11 whether in fact she does have a memory problem.
12 Did she ever have a memory problem before the
13 accident. Did she have an injury to her head; all
14 of these questions are designed to show that in fact
15 she remembers what occurred.

16 Now, just one minute, your Honor. This
17 was taken when she was in a Glens Falls Hospital at
18 a time when she had no motive to fabricate anything
19 or so an injury could find. And it says exactly
20 the same thing. And it is exactly for that reason
21 that I say it is admissible. Not for the truth of
22 what it shows, but to show that at a time very close
23 to the time of this accident her -- taken by some
24 representative of her own attorney, she made the
25 same statement that she has no recollection. And

1 I therefore feel that that is exactly why, because
2 the jury has been given the idea that maybe she
3 does have a recollection and she is hiding something;
4 that is the tone of the cross-examination here.

5 THE COURT: Of course it is.

6 MR. SPATT: So that's why that statement
7 is important.

8 THE COURT: What I suggest to you is that
9 is inevitable, the jury will decide that themselves
10 anyway.

11 MR. SPATT: Here it is, Judge.

12 THE COURT: And they argue it out in terms
13 whether that makes any sense. My guess is they
14 will conclude it doesn't make any sense.

15 MR. SPATT: Here's something that's concrete.

16 THE COURT: Or making believe.

17 MR. SPATT: But here's something that --

18 THE COURT: No, that's not something that's
19 concrete. Something that is concrete is the hospital
20 record or the medical opinion at the time. Now
21 perhaps it is unfortunate, but see, the medical
22 belief that you can have traumatically incur amnesia
23 with retrospectant effect is old as I can remember.
24 Doctors have been agreeing that to mind certain
25 knowledge for about all, since 1929, when I first

1 heard about it, that you can have traumatic amnesia,
2 that is caused by impact and that totally obliterated
3 the recollection of the event and reaches backward
4 in time for varying distances back.

5 And I think there has been some cases quite
6 far back, but in any event to envelop the few
7 moments in an accident, that's old and I should
8 think there is something that would hardly be missed
9 in a case of extreme as this and would be all over
10 the hospital record. It might not be, because as
11 Mrs. Weiner has pointed out, she wasn't going any-
12 where, anywhere. She was going to be immobilized
13 for some time. She had a broken nose and cuts on
14 the back of her head.

15 I can't imagine they can look at the dilation
16 of the pupil and see whether or not there was a
17 shadow on the retina and all that. So, it ought
18 to be on the hospital record. But since the
19 beginning where the orthopedic injuries that it
20 could have been over looked, I don't know how good
21 orthopedic doctors are.

22 MR. SPATT: Well your Honor, I would like
23 to have an opportunity to submit some law on this
24 point because as I had this little handbook which
25 I take along with just for these times when it

3 accident to our lawyers in New Jersey.
1 says -- "if a witness' testimony is attacked as a
2 recent fabrication -- "

3 THE COURT: Very familiar.

4 MR. SPATT: I think that is, you don't
5 think it has, but I respectfully do. -- "it is
6 proper to show for purposes of rehabilitation that
7 at a time when there was no motive to falsify -- "

8 THE COURT: See, that's the part you fall
9 down on. First, that it is not a recent fabrication
10 would hardly be called that. Because there is no
11 question that she has consistently said this from
12 the very beginning. We are all agreed on that.

13 MR. SPATT: Except the motor vehicle report.

14 THE COURT: The motor vehicle report fully,
15 naturally explains, we are all agreed on that.

16 MR. SPATT: We are, but I don't know if
17 the jury is, your Honor.

18 THE COURT: If the jury isn't I would have
19 to tell them that, ordinarily inconsistent statements
20 can't be shown. And really, you see, you have a
21 lot of prior consistent statements shown here. And
22 she has testified here under oath that she never,
23 that she never had any recollection of this accident.
24 She has been asked well, two, three other occasions,
25 two other occasions has testified under oath and her

1 answer was yes. Then I think there was the one
2 unsworn statement which had nothing.

3 MR. CAMERON: I asked her to read it and I
4 said in sum and substance was, you know, nothing
5 about the accident, she said that was the signed
6 statement.

7 THE COURT: A long line of wholly consistent
8 testimony. Nobody has ever suggested she ever said
9 anything else at any time.

10 MR. SPATT: Until summation.

11 THE COURT: Well if somebody happens at
12 this time of summation, then the blood will flow.

13 MR. CAMERON: Mr. Spatt, I have been sitting
14 here patiently in answer to Mr. Spatt's arguments,
15 about the recent fabrication. Two parts in regard
16 to that section that he cites, it says, "If the time
17 she made a statement -- " in this particular case
18 she had good reason to say she knew nothing about
19 this accident, it is consistent, that is the Rule
20 of Evidence is not applicable. Mr. Spatt that's a
21 question for the jury, your Honor.

22 THE COURT: No, you see --

23 MR. LEVITT: May I be heard.

24 THE COURT: Whatever motive she has to
25 misrepresent, she has always had. But it is greater,

3 THE COURT: Mr. Zawacki, let's move on.
1 more complex than when you start talking about some
2 thing like this because things are in echelone, this
3 was enough for a mother to remember.

4 MR. LEVITT: Would your Honor correct me
5 if I am wrong. I think I agree with my brother
6 attorney on two things; disagree on one. Did your
7 Honor say something about has to be a physical defect
8 in the car?

9 THE COURT: No, I said there was no claim
10 of that.

11 MR. LEVITT: Except the tires, whatever
12 they see in it.

13 MR. SPATT: He didn't say that.

14 THE COURT: What else?

15 MR. ZAWACKI: I think that again --

16 MR. LEVITT: I think I agree with Counsel,
17 the proof of interest of this person, I think it is
18 in now, and proof that she may be lying is something
19 which her own Counsel under no conditions could
20 bring out by innuendo, I think. With respect to
21 recent fabrication, I think the cases are clear the
22 accusation must be clear and direct, it doesn't say
23 merely cross-examine someone on something is not
24 constituting ground for recent - aside from the
25 anti-litumbis (phonetic).

1 MR. SPATT: That is not my - more so -
2 they have gone so far away from that mere cross-
3 examination that I'm mere crossing examination time
4 and time again they have allowed prior consistent
5 statements at a time when they had no motive to
6 fabricate especially in the case where the whole
7 cross-examination is personated with one idea, this
8 one trying to do something out of greed and tell a
9 false story that she does not remember. And I
10 think it is essential and highly prejudicial to the
11 Plaintiff in this case to keep out a statement taken
12 in a hospital by her own representative that says the
13 exact same thing nine days after the accident.
14 Especially when your Honor has let in the motor
15 vehicle report. Especially then.

16 THE COURT: You see --

17 MR. SPATT: It's very relevant and
18 material.

19 THE COURT: Motor vehicle report was
20 offered against her.

21 MR. SPATT: I know, but under those
22 circumstances since that is a part of a thrust of
23 cross-examination to show that she wasn't hurt that
24 bad, she didn't have an head injury, she never had
25 memory lapses before the accident, what is all of

1 that for, your Honor, that Mr. Cameron so aptly
2 brought out, what is that to show, that she's a nice
3 lady or is it to show that she never had memory
4 lapses before, so now she's a liar? That's what
5 that was brought out to show and very effectively.
6 That was brought out to show here is a prior incon-
7 sistent statement taken by her own representative when
8 at the time she had no motive.

9 THE COURT: If I may put it this way: A
10 wholly artificial foundation has been laid for the
11 putting in of this, because it couldn't be any
12 possible basis for letting it in except your mere
13 offer of it. That created the situation because
14 now the jury knows there is something in existence
15 which they have not seen because before that there
16 wasn't a word in this record to suggest that at any
17 time she had ever said anything different. Though
18 totally artful false situation has been presented
19 whereby asking about that document, you have suggested
20 that an occasion existed for her to have said some-
21 thing different.

22 MR. SPATT: I did not.

23 THE COURT: And now the jury doesn't know
24 what she said on the earliest dated occasion on
25 which she could of said anything. This is the

1 situation of your creation, not the Defendant's.

2 MR. SPATT: I am not the one who showed
3 her that statement originally, Judge, I didn't bring
4 that statement out at all. One of the defense
5 attorneys brought that statement out.

6 THE COURT: Did you?

7 MR. CAMERON: I asked her, your Honor.

8 MR. SPATT: I didn't bring that out, Judge.

9 MR. CAMERON: Sum and substance of that
10 statement, you know, being in the accident, she said
11 yes.

12 MR. SPATT: I did not bring that statement
13 up in my direct-examination.

14 THE COURT: But he said what?

15 MR. CAMERON: That I asked her to read
16 both statements, the affidavit and the signed
17 statement. I said to her is it sum and substance
18 of the statement, you know about the accident, she
19 said yes.

20 MR. SPATT: So nobody else said anything
21 else but that, but I say that's enough for me to
22 get into evidence because of the type of cross-
23 examination.

24 THE COURT: But don't you see it has been
25 said whatever has been said about her up until this

1 point does not intimate all, but quitted around and
2 that she has ever said anything different.

3 MR. SPATT: I know that your Honor, I
4 realize that.

5 THE COURT: So I come back to what I said,
6 only by your offering it that an issue is created.

7 MR. SPATT: Well I offered it in good
8 conscience and without that, it was admissible
9 under the Rule that I have said to your Honor and
10 I still think it is. I most respectfully think
11 that's classic.

12 THE COURT: I overrule the objection to
13 its introduction in evidence which wasn't worth
14 making in any case. It is sustained. It is not
15 an occasion for showing a prior consistent statement.

16 Furthermore, there is no suggestion that it
17 contains anything other than prior consistent state-
18 ment and therefore there is no point in showing it.
19 Self-serving declaration, want to call it that, what
20 ever that means.

21 MR. SPATT: Well your Honor, please,
22 rather than we do the same thing before the jury
23 with this affidavit, that was sent to the motor
24 vehicle, a sworn statement, in which she said --

25 THE COURT: See, you are offering them --

1 now they could offer these things if they want it
2 because interested party.

3 MR. SPATT: Well, I'm offering them for
4 this, I don't want to repeat it or beat a dead horse,
5 but this whole cross-examination in my opinion was
6 going to show that she had some --

7 THE COURT: See, you wanted to prove that
8 she had no recollection.

9 MR. SPATT: That's right. That's right.
10 And these statements, this one is under oath.

11 THE COURT: What do you want to offer
12 this as an admission that she has no recollection?

13 MR. SPATT: Correct.

14 THE COURT: How about that?

15 MR. CAMERON: Your Honor, it's self-serving
16 again for the same reason she's testified.

17 THE COURT: No, because his client in this
18 case is Audrey Weiner.

19 MR. SPATT: I offer it for another, your
20 Honor.

21 MR. ZAWACKI: He forgets who his client
22 is, that is not his client on the stand. He has
23 no right to rehabilitate a party who he is suing,
24 that's what he is trying to do here.

25 MR. SPATT: I have a right to put any

1 witness that's on the stand --

2 THE COURT: See, the situation?

3 MR. SPATT: The rule on this statement
4 after a recent fabrication, Judge, does not relate
5 to a party, only, it relates to both the --

6 THE COURT: Of course it has nothing to do
7 with parties, nothing to do with parties at all.
8 If you want to offer it against her as an adverse
9 party, that's another matter.

10 MR. SPATT: I do, your Honor.

11 MR. LEVITT: No inconsistency.

12 THE COURT: Sure, does it mean that the
13 whole artificial case is full of inconsistency?

14 MR. LEVITT: No, it becomes a self-serving
15 declaration when he offers it to sustain, not to
16 contradict.

17 THE COURT: But now he's got her tied
18 down, tied to the admission that she had absolutely
19 no recollection of this.

20 MR. LEVITT: But she hasn't denied it. If
21 it's only, if your Honor please, when she denies it,
22 that he can offer a statement to contradict her.

23 THE COURT: No, see, we are talking about
24 parties, not about witnesses.

25 MR. LEVIT Yes. Even with a party,

1 when a party of a party denies something he can
2 contradict that party in writing or by various other
3 ways, but for our purpose by writing he could do it.
4 But she said nothing which is contradictory, she said
5 something to so and so. All he is doing is offering
6 a consistent statement to consistent testimony. He
7 is not contradicting her.

8 THE COURT: I know, but he is offering a
9 consistent pattern of admissions which ties it down
10 for all time. As against the argument on the other
11 side.

12 MR. LEVITT: Of course I understand that,
13 but I respectfully submit you cannot offer a state-
14 ment for that.

15 THE COURT: All right. You can offer it
16 as a prior consistent statement to rehabilitate on
17 a fabrication.

18 MR. ZAWACKI: Yes of course you can.

19 THE COURT: She is an adverse party, he
20 put her on the witness stand, got her to admit she
21 had no recollection and he can prove that as often
22 as she admitted it. If by cumulative but, that's
23 all. But it's not coming in as prior consistent
24 statement to bolster up anything about fabrication.

25 MR. SPATT: Your Honor, I am going to

offer both of these statements in evidence when the jury comes back. I just wanted to clear that up so I won't do anything that's going to cause any problems more than normally. I mean.

THE COURT: Okay. I have already ruled on it. I say they come in as admissions but not as prior consistent statements to confront the accusation of recent fabrications.

MR. LEVITT: We have an exception.

THE COURT: Oh heavens, yes.

MR. LEVITT: Thank you.

MR. CAMERON: Your Honor, is that the signed statement and the affidavit?

THE COURT: Yes. I think they add absolutely nothing, either of them.

MR. CAMERON: That would be Plaintiff's 4 and 5.

THE CLERK: Yes.

THE COURT: Have we given a number to the affidavit?

THE CLERK: No, sir. 4 was the statement.

MR. SPATT: The statement is 4, your Honor, for identification.

THE COURT: Then the affidavit will be 5.

MR. SPATT: Right.

1 (Whereupon the jury enters the courtroom at
2 4:24 P.M. and the following proceedings are resumed
3 in their presence:)

4 MR. SPATT: Your Honor I offer in evidence
5 the statement dated March 16, 1971, and the affidavit
6 dated October 15, 1971 as separate exhibits.

7 THE COURT: October 15; is that right?

8 MR. SPATT: Pardon me, sir? Yes, sir.

9 THE COURT: 1971.

10 THE CLERK: Received, your Honor as
11 Plaintiff's Exhibit 4 and 5 in evidence.

12 (Whereupon a statement previously received
13 and marked Plaintiff's Exhibit 4 for identification
14 is received and marked Plaintiff's Exhibit 4 in
15 evidence by the Clerk of the Court.)

16 (Whereupon an affidavit is received and
17 marked Plaintiff's Exhibit 5 in evidence by the Clerk
18 of the Court.)

19 MR. SPATT: I have no further questions
20 of this witness. I would like to read the statement
21 now, your Honor, of March 16th.

22 THE COURT: Did you have any further
23 questions?

24 MR. ZAWACKI: I have.

25 THE COURT: Go ahead.

1 RECROSS-EXAMINATION

2 BY MR. ZAWACKI:

3 Q Mrs. Weiner, you made a special trip up
4 here for the trial of this case?

5 A Yes, sir.

6 Q You live in Alabama?

7 A Yes.

8 Q Discussed this case I assume with your
9 husband before, have you?

10 A Yes.

11 Q Discussed it with your mother-in-law?

12 A Not very much.

13 Q Do you say Mrs. Weiner that you were never
14 aware until his Honor made that statement, you were never
15 aware that if the suit was successful against you, that is,
16 if you were found negligent, that you were never aware that
17 you and your husband would get the money?

18 MR. SPATT: I object to that; it has already
19 been asked.

20 THE COURT: Yes, I think that's been
21 fully covered.

22 Q (By Mr. Zawacki) Mrs. Weiner, you are
23 now aware of course you know I am a lawyer. If we win this
24 case you and I, you and your husband get nothing?

25 A That's correct.

1 Q But if you and I --

2 MR. SPATT: I object to that as an improper
3 statement of the law leaving out the fact there are
4 two other defendants that we're suing here and I
5 would like to have the jury know - instructed that
6 if we get a verdict against the Greyhound bus or
7 the other defendant, that the same pecuniary loss
8 will exist.

9 THE COURT: Certainly.

10 MR. SPATT: So there --

11 THE COURT: That's perfectly clear. In
12 other words, where an accident is the result of the
13 fault of more than one person, than one, that both
14 bring about the accident and they are both at fault,
15 then the person who is damaged can sue either or
16 both. If only one or two persons sued are found
17 by the jury to be at fault, then of course the verdict
18 goes on against the one who is found at fault.
19 Damages would be in any event is what the injury
20 would be; what the jury found that was sustained by
21 the Plaintiff and the judgment would be in that
22 amount and it wouldn't be any larger or smaller
23 because of the number of defendants who were --
24 because the size of the judgment is only on the
25 amount of damages found, the plaintiff has sustained.

1 Q (By Mr. Zawacki) Mrs. Weiner, had you

2 ever given a signed statement by about this particular
3 accident to your lawyers in New Jersey?

4 A I can't remember.

5 Q Do you know I am talking about your lawsuit
6 in New Jersey?

7 A Yes. I can't remember very much contact
8 with lawyers about that suit at all.

9 Q Well, weren't you deposed in that case;
10 didn't you give a deposition in that case in New Jersey about
11 this accident?

12 A No.

13 MR. SPATT: If your Honor please, that
14 question was asked in direct and cross-examination
15 by Mr. Zawacki whose answer I don't remember.

16 THE COURT: I think so. It's
17 possible. I think so, someone has.

18 MR. CAMERON: I did, your Honor, I did.
19 She didn't know.

20 Q (By Mr. Zawacki) But you were involved
21 in a separate case over in New Jersey?

22 MR. SPATT: I object.

23 MR. LEVITT: I object to that if your
24 Honor please.

25 THE COURT: Please --

1 MR. LEVITT: Because now I am going to
2 bring out if your Honor please with your Honor's
3 permission what was -- my driver was involved in.

4 THE COURT: No, you are not.

5 MR. LEVITT: With your Honor's permission,
6 I said.

7 THE COURT: This is going to stop right
8 here.

9 MR. ZAWACKI: May I ask this question?

10 THE COURT: I don't know, I haven't heard
11 it, Mr. Zawacki.

12 Q (By Mr. Zawacki) Didn't you give testimony
13 in New Jersey in the case where your husband sued you?

14 MR. SPATT: I object to that question if
15 your Honor please and ask that question not be answered
16 as being irrelevant and immaterial. If Counsel had
17 such testimony, let him produce.

18 THE COURT: Yes, I think that's it.

19 MR. ZAWACKI: I don't know if there is any
20 given, your Honor.

21 THE COURT: Then you should not have inquired,
22 just taking up too much of our time. Find out over
23 the weekend.

24 Q (By Mr. Zawacki) Is the New Jersey case
25 still going on?

1 A No.

2 MR. SPATT: I object to any other testimony.

3 THE COURT: Mr. Zawacki, let's move on.

4 MR. LEVITT: May we go before your Honor
5 now?

6 THE COURT: No, we are going ahead with
7 this.

8 Q (By Mr. Zawacki) Would you tell me what
9 the name of the lawyer was who represented you in New Jersey?

10 MR. SPATT: I object to that.

11 THE COURT: Now he may have that, he can
12 get it.

13 MR. SPATT: I don't know anything about
14 this case in New Jersey. It is the first time I
15 heard about it.

16 THE COURT: I'm afraid you'll have to ask
17 the witness.

18 Q (By Mr. Zawacki) Who has the name of the
19 lawyer that represented you when your husband sued you?

20 MR. SPATT: I will object to him going on.

21 THE COURT: Get it after this session of
22 court is over from Mrs. Weiner.

23 MR. ZAWACKI: I have no further questions.

24 MR. CAMERON: No questions, your Honor.

25 MR. LEVITT: I just want to ask the same

question; is your husband suing you in New Jersey?

MR. SPATT: I object to this.

THE COURT: C'mon. We decided - I decided we are not going into that. Anything further, gentlemen?

All right, you are excused Mrs. Weiner.

(Witness excused.)

MR. SPATT: Your Honor, knowing that it's late and I don't know what you are - I know you are very very hard working.

THE COURT: Witness' testimony will be brief?

MR. SPATT: No, sir.

THE COURT: I imagine the jury would like to go home. All right, then, the jury, we will recess now or adjourn now until 10 o'clock on Monday morning. Check in downstairs. Please be on time. Please do not discuss the case with anyone or amongst you on the jury until finally given to you to decide.

(Whereupon the jury leaves the courtroom at 4:35 P.M.)

(The following takes place out of the presence of the jury:)

THE COURT: I wanted to get some idea

1 from you about how long you thought the case would
2 take and what other witnesses you expect to have, and
3 so on.

4 MR. SPATT: I anticipate that I will be
5 substantially through with my case by Monday or at
6 the latest Tuesday morning.

7 MR. CAMERON: I'm glad to know this, I
8 intend to bring the Stones in Monday with your Honor's
9 permission. Shall we make it Tuesday then?

10 THE COURT: I don't know, what do you
11 think?

12 MR. CAMERON: Because they have to come
13 down from Vermont.

14 THE COURT: Where is Brown --

15 MR. LEVITT: We will have Brown here, yes,
16 Judge.

17 MR. CAMERON: Well, I won't mind -- if he
18 wants to put on Brown - if you don't --

19 THE COURT: He is sure to have Brown here,
20 maybe we will do Brown next.

21 MR. LEVITT: I will have Brown here.

22 THE COURT: Other thing we were looking,
23 we were looking, the morals of the case in the part
24 of the digest that Mr. Levitt showed us, by the way,
25 that the digest title is Death.

1 And the cases are pretty much tucked away
2 in Section No. 33 and 24, 25, but there is an ARO
3 Second, was that in 97 AL Second? Am I telling
4 you what you already know which collects all the
5 cases and apparently this whole question has been
6 faced in half a dozen courts. Always in the same
7 artificial terms. As far as we can make out that is
8 the same result. That I think New York is if any
9 thing, the most outspoken among judges usually in
10 local courts of not particularly liking cause of
11 action. Particularly of course where the sole
12 beneficiary is the alleged wrongdoer. But the
13 case seems to go right along anyway.

14 I think we simply have to live with it, but
15 the officialty of it is so overwhelming that the
16 real issues are simply concealed from the jury
17 because I would suppose that the real issue in this
18 case is the carrier and insurer of this risk. And
19 are the damages real, so on, because in a death
20 action that's pretty easy.

21 But except for demonstration purposes, but
22 creates a very artificial situation when instead of
23 going out in front with an open - we are required
24 to go out at this man, follow fight-way, that that's
25 it, all but impossible for us to act sensibly.

1 And I don't think we are particularly
2 people, any of us. But we have had to do here
3 today - it's been pretty silly.

4 How we ever get the law turned around and
5 attack these things sensibly, I don't know, but I
6 would suppose that in the world of compulsory
7 automobile liability insurance that we graduated
8 from all that nonsense. Besides which I'm not sure
9 they have in New Jersey.

10 MR. ZAWACKI: More liberal here than that.

11 MR. SPATT: No compulsory.

12 MR. LEVITT: Accidents.

13 MR. ZAWACKI: No it's no fault in New Jersey
14 that they make it.

15 MR. LEVITT: Before I forget, -- does
16 your Honor want us to leave exhibits here?

17 THE COURT: No as long as you each - as
18 you are all cleared with whose charged with responsi-
19 bility.

20 Well, it is so hard to tell because you
21 don't offer an exhibit from your own file, sometimes
22 you offer one from the other fellow's file.

23 MR. SPATT: May I ask your Honor to on
24 Monday morning, I will respectfully ask your Honor
25 to charge to the jury -- advise the jury that any

1 discussion of any case other than the present one
2 is relevant and material to the issue in this case.
3 I think that should be done. I think that whole
4 line of cross-examination had no purpose whatsoever
5 except to prejudice this jury and inflame this jury
6 with no relevance whatsoever of the issue of
7 negligence or anything else in this case.

8 MR. ZAWACKI: Well your Honor, I will
9 reply to that. I don't know if I should. But I
10 intend to bring out when the witness Mr. Weiner
11 takes the stand that he was part in that vehicle
12 and he chose to charge his own wife with negligence.

13 Now if he says he doesn't know what
14 happened, I think he sworn, I think his statement
15 was sworn, she was guilty of negligence, she made
16 those statements against her, didn't sue Greyhound
17 and didn't sue Mr. Brown.

18 MR. SPATT: Well if your Honor please,
19 if he has any statements under oath --

20 MR. ZAWACKI: Summons, the complaints.

21 MR. SPATT: Is it verified by the
22 Plaintiff?

23 MR. ZAWACKI: Offhand I don't know.

24 MR. SPATT: That would be something else.

25 MR. ZAWACKI: You got \$35,000.

1 THE COURT: What bothers me --

2 MR. ZAWACKI: Got 35,000 from his wife in
3 New Jersey.

4 MR. SPATT: How could he sue his wife in
5 New Jersey?

6 MR. ZAWACKI: Over there the carrier pays
7 off.

8 THE COURT: They don't have the interposed --

9 MR. ZAWACKI: Not in New Jersey.

10 THE COURT: And anyone have the one-third?

11 MR. ZAWACKI: No.

12 THE COURT: Insurance law?

13 MR. ZAWACKI: Only the insurance that --
14 In other words --

15 MR. SPATT: I did not represent --

16 THE COURT: Trouble again is, you see,
17 this is what's been going on. It bothers me from
18 your point of view Mr. Zawacki becoming increasingly
19 obvious when you think in these terms representing
20 the carrier or others than your client of record.
21 This is getting incredibly awkward.

22 MR. ZAWACKI: Your Honor, the fault is
23 not mine. I don't see your Honor says that. The
24 fault here is that the proceeds of this lawsuit go
25 to the mother and father, that is something that

cannot be kept from the jury. I know the jury -
I don't think the jury is - in the jury - is any
error to think they can take it out of one pocket
and put it in another.

THE COURT: I don't know what you are
going to do. When we get sensible people, it
just doesn't stand up. Yes, we are not allowed
to take the mask off.

MR. CAMERON: This maybe somewhat
academic, Mr. Zawacki, getting that information
to indicate there has been a law cited, have an
affidavit or has been testimony or complaints by
the husband against the wife in which to bring it
out, it would be academic on my cross-examination
because I believe I certainly have that right.

THE COURT: You can bring all of this
out. Yes. And anyone of you could show,
Mr. Zawacki could have showed or the Plaintiff
could have showed that the amnesia was a matter
of medical record.

MR. SPATT: Just in that respect your
Honor, excuse me one minute. Did Mr. Zawacki -
would you be good enough to tell me whether they
served a subpoena for her medical records, you
said there --

1 MR. ZAWACKI: I did not serve a subpoena
2 for her medical record.

3 MR. SPATT: I see, then if your Honor
4 please, I will have a subpoena served for her
5 hospital records.

6 THE COURT: See if you can get ahold of
7 those. Because if there is any, you know, if there
8 is some real question about it, then I think that
9 we don't end up with the burden necessarily.

10 MR. SPATT: I also have been thinking
11 your Honor if you have a few minutes, just about
12 your Honor's method of the --

13 THE COURT: You better listen to this,
14 gentlemen.

15 MR. SPATT: My own feeling is that the
16 preferred way to do it as it has been done on other
17 occasions is to allow the jury to apportion that.

18 THE COURT: Of course.

19 MR. SPATT: And at the same time as the
20 verdict. That is I think --

21 THE COURT: Not preferred by me.

22 MR. SPATT: Well I say that your Honor
23 that the courts have been through a little bit of
24 it in the State Courts, I think even perhaps even
25 more than in the Federal Courts.

THE COURT: I certainly hope so.

MR. SPATT: They have come around that classic case involving a fire up in Westchester County where they spent weeks and weeks trying the question of negligence; they came to a verdict against two people, then when they did the apportionment, they did it exactly in the reverse. They then took all the testimony and made a contrary finding on the second issue. And the Appellate Division of the Second Department said you shouldn't have done that Mr. Justice Dagliardi which I think was him.

MR. ZAWACKI: It was Futesberg that caused all the trouble, he's not in this.

MR. SPATT: I'm almost as bad as him now anyway.

THE COURT: What case is that?

MR. SPATT: I will get you the citation. I'll have it for you.

MR. ZAWACKI: Everybody against the community center.

MR. SPATT: It was the Jewish Community Center fire case where the kid was accused of arson. I'll get the citation. I'll have it here with you. Well, I work tomorrow, but you'll have it with you

1 Monday morning, Judge. I don't think I'll be able
2 to get it before that.

3 THE COURT: All right.

4 MR. SPATT: In there they said we shouldn't
5 do it this way, you should do it, so that they'll
6 be no inconsistencies later on. We don't have to
7 go over the same testimony again. Let this jury
8 get the question. If you find there are more than
9 one liable, decide in what proportion they are
10 liable. That is similar to what they have been
11 doing.

12 THE COURT: The only difference with
13 that is I wholly disagree.

14 MR. SPATT: I see. That is a fatal
15 difference, Judge.

16 MR. ZAWACKI: If I may in this, I don't
17 know who your Honor -- I don't know in my experience
18 in a case such as this if the jury came back against
19 the three defendants there would be an additional
20 charge if Counsels sometimes is given a chance to
21 sum up for a few minutes on that issue. If we do
22 it Mr. Spatt's way they have no chance to sum up
23 on the dollar issue.

24 THE COURT: That was very much my feeling.
25 The issues are better taken up separately because

1 otherwise the jury I think is likely to think of it
2 in terms of, oh, well, let's sort of spread it
3 around.

4 MR. CAMERON: Also your Honor --

5 THE COURT: But that's not right.

6 MR. CAMERON: -- if we do it Mr. Spatt's
7 way, our summations wouldn't - I doubt would
8 certainly be longer because I have to hit on both
9 issues.

10 THE COURT: Having you fellows in --
11 each other. Is that right Mr. Spatt?

12 MR. SPATT: I only add, no, I only expect
13 they will represent their own clients. I'm sure
14 they will, Judge.

15 MR. CAMERON: It would be better if we
16 had double summations.

17 MR. LEVITT: I think things are getting
18 a little deep now when we speak of getting --

19 MR. SPATT: I mean additional representation
20 which I'm sure they will.

21 THE COURT: I think we have had enough.

22 (Whereupon the Court is adjourned for the
23 day at 4:45 P.M.)
24
25

CERTIFICATE

I, IRA N. RUBINSTEIN, Official Shorthand Reporter
and Notary Republic of the State of New York, do hereby
certify the foregoing transcript to be a true and accurate
record of the testimony and proceedings had at the time and
place hereinbefore set forth.

IRA N. RUBINSTEIN, C.S.R.

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----x

5 ALAN VANCE WEINER :

6 Plaintiff :

7 against :

8 BARBARA WEINER et al. : 71 C 1177

9 Defendants :

10 -----x

11
12 United States Courthouse
13 Brooklyn, New York

14 September 30, 1974

15
16 B e f o r e

17 HONORABLE JOHN F. DOOLING, U.S.D.J.

18 and a jury

19
20
21
22
23 BURTON SULZER
24 Official Court Reporter
25

Appearances:

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JAMES CAMERON, Esq.
Attorney for Defendant

STANLEY ZAWACKI, Esq.
Attorney for Defendant

1 MR. SPATT: I would like to call Louis B.
2 Weiner to the stand, sir.
3

4 LOUIS B. WEINER, called as a witness,
5 first being duly sworn, testified as follows:

6 MR. SPATT: If your Honor please, before
7 I ask Mr. Weiner any questions, I would like to
8 offer the hospital record in evidence.

9 THE COURT: The Julie Weiner?

10 MR. SPATT: Yes.

11 MR. ZAWACKI: I have no objection.

12 MR. CAMERON: No objection.

13 MR. LEVITT: No objection.

14 THE CLERK: Plaintiff's Exhibit 6 in evidence.

15 (So marked)

16 THE COURT: That does not mean, members of
17 the jury, that you are going to have to read it,
18 but you may have to refer to those parts of it to
19 which counsel direct your attention.

20 DIRECT EXAMINATION

21 BY MR. SPATT:

22 Q Mr. Weiner, where did you reside on March
23 7, 1971?

24 A In Parsippany, New Jersey.

25 Q Where do you reside now?

1 L. Weiner-direct

2 THE COURT: There is something I did want to
3 ask counsel about, if you would come up for just a
4 moment, and this mechanical question reminds me of it.

5 (The following occurred side bar.)

6 THE COURT: Of course, the complaint alleges
7 that the Weiner car was MR -- something or other --
8 New York registration.

9 MR. SPATT: It must be New Jersey, your Honor.

10 THE COURT: Does it show up in any photo-
11 graphs?

12 MR. CAMERON: I saw a picture of the car. It
13 had Jersey plates.

14 MR. LEVITT: I don't think that there would
15 be any difficulty in agreeing on it.

16 MR. CAMERON: It is a Jersey plate.

17 MR. LEVITT: Judge, I objected to all the
18 testimony that was given with respect to who gets
19 the money, who has an interest in it. I had a
20 continuing objection to that, but I am repeating
21 each one. I didn't want to interfere each time.

22 MR. SPATT: I also, of course, have an objec-
23 tion to that.

24 THE COURT: When we get to damages--

25 MR. SPATT: / I make a suggestion? At a

L. Weiner-direct

propitious time, either this morning or this afternoon, or any time, your Honor, I would like to speak with you and counsel in your chambers about a possible solution to this.

THE COURT: We have the charge language ready for you and you can look at it together, and that might help us in our thinking.

MR. SPATT: I am talking about something other than that, your Honor.

(The following occurred in open court.)

BY MR. SPATT:

Q Where do you live at the present time,
Mr. Weiner?

A Huntsville, Alabama.

Q How old are you, sir?

A Thirty-three.

Q What was your occupation at the time of this accident?

A An engineer.

Q Who were you employed by?

A At that time I was employed by Western Electric
in Princeton, New Jersey.

Q Who are you employed by at the present time?

A Teledyne, Brown Engineers in Huntsville.

1 L. Weiner-direct

2 Q In what capacity?

3 A Engineer.

4 Q How old was Julie at the time of this acci-
5 dent, Mr. Weiner?

6 A She was ten.

7 Q Were you the owner of a 1964 Chrysler
8 Imperial car involved in this accident?

9 A I was.

10 Q And at the time of this accident, as your wife
11 told the jury, you were on your way to a ski vacation or a
12 ski holiday; is that correct?

13 A Correct.

14 Q What time did the family get up in the morn-
15 ing that day, Mr. Weiner?

16 A I don't recall the exact time. It must have
17 been like eight or nine in the morning.

18 Q You were then sometime during the day
19 involved in packing and loading the car for this week
20 vacation?

21 A Correct.

22 Q What time, about, did you leave your house
23 that day?

24 A I am not again quite sure, but it should
25 have been about noon or shortly thereafter.

L. Weiner-direct

Q Who was driving the car at that time?

A I was.

Q Where were the children located in the car?

A They were in the back seats.

Q And do you know where in the back seat?

A No, I don't.

Q Did they remain in the back seat all the time up to and including the time of the accident?

A Yes.

Q Will you tell the Court and jury what route the car took to get to where the accident occurred?

A We went north in New Jersey until we got on the New York State Thruway, and I don't recall, there are several alternate routes to take to the Thruway, and I don't recall which I took on that day.

Then we went north on the Thruway, through Albany up the north way, you get up the north way and take Route 149 east towards Whitehall, and I forget the name of the other towns, and from there I can't remember the road names although I think I can reconstruct the route driving it.

Q At what point did you enter the New York State Thruway?

A I don't recall. I don't recall which route

L. Weiner-direct

we took. We would have entered either down by the Garden State Parkway, if I took the Garden State Parkway, or Spring Valley, if I went up through New Jersey.

Q Did there come a time during the time you were on one of these roads that you changed drivers?

A Yes, sir.

Q And do you remember where that was?

A It was somewhere on the Thruway south of Albany.

Q Who drove at that point?

A My wife Barbara took over driving at that point.

Q Did she drive from that point to the point where the accident occurred?

A Yes, sir.

Q Was she driving at the time of the accident?

A Yes.

Q How long were you driving when you left your house?

A I didn't clock the time. It should have been several hours.

Q How were you feeling that day, Mr. Weiner?

A Quite sick.

Q What kind of sick?

L. Weiner-direct

1
2 A Well, it's hard to define, groggy from --
3 from what I recall, groggy, headachy; I was not sick to
4 my stomach, but I could not stay awake. I wanted to sleep
5 all day.

6 Q In fact, you were sick to the extent that
7 you almost considered canceling the trip; isn't that
8 right, sir?

9 A That's correct. We talked about that and
10 decided that we would go anyway and see how I felt up
11 there.

12 Q In any event, how long was your wife driving
13 the car from the time she took over until the time the
14 accident occurred?

15 A Again, I don't know in exact time. It
16 should have been several -- three, four hours.

17 Q What were you doing just before this
18 accident occurred?

19 A Sleeping.

20 Q How long had you been sleeping? For what
21 period or what length of time or what length of distance
22 had you been sleeping?

23 A I had been sleeping pretty much from the
24 time I gave the driving to Barbara until the time of the
25 accident. I woke up on some brief occasions, but I was

L. Weiner-direct

asleep for most of the time.

Q Mr. Weiner, do you remember testifying at an examination before trial?

A Yes, sir.

Q In this court in August of 1972?

A Yes, sir.

Q Do you remember being asked questions by various attorneys, all the attorneys in the case at that time?

A Yes, sir.

Q Mr. Weiner, I want you to tell in your own words what you remember, everything that you can remember, about this accident. Please tell the Court and the jury.

A I woke up. I was laying down in the front seat of the car, in the passenger's seat, I was laying to my left. I woke up and started to sit up, and as soon as I could see out the front wind screen I saw a guardrail and it was obvious we were going to hit it. I don't know why it was obvious, but as soon as I saw it I knew we were going to hit it, and I was also staring at pretty much the dashboard of the car.

Then I remember seeing the front of a Greyhound bus filling the entire windshield, the words, "Greyhound" were from side to side, and that's all I remember

L. Weiner-direct

until I was being taken out of the car.

Q Do you remember whether the car made contact, your car made contact with the guard rail?

A I don't remember contact with the guard rail.

Q Do you remember a contact between the car and the bus?

A No, I don't remember that either. I have again two fragmentary memories, one about to hit the guard rail and one about to hit the bus.

Q Did you sustain injuries in this accident?

A Yes, I did.

Q What injuries did you sustain?

MR. ZAWACKI: That's objected to.

MR. LEVITT: Objection.

THE COURT: He can testify to his own symptoms, but not, of course--he is not in a position to furnish a medical diagnosis.

A My upper and lower jaws were broken, most of my teeth were knocked out; my nose was pretty much severed from my face, my eye socket was broken, blown out fracture, I believe the doctors called it; various cuts and contusions about my face, and I had a broken foot. I don't remember which foot was broken.

Q Mr. Weiner, do you know what road your car

L. Weiner-direct

was on at the time of the accident?

A Route 149:

Q Do you know how long the car was on 149 before the accident?

A I don't know the length of time. I know the route and approximately where the accident occurred, so it should have been a half hour, an hour down the road, but I again didn't have any indication and didn't measure the time.

Q Do you know how fast the car you were in was going at the time you woke up and saw this guard rail?

A No, sir.

Q Or any time during this sequence?

A No, sir.

Q Do you know at any time what the speed of the car was when it was on the thruway?

A No, sir.

Q Do you remember being asked this question on page 24, line 10--

MR. SPATT: Your Honor, I am sorry I don't have another copy of it.

THE COURT: I don't need it. I will hear it the same as the jury.

Q "Question: you know what speed she was

L. Weiner-direct

driving at?

"Answer: I don't know for a fact, but if it was significantly above the speed limit I know I would have said something. I would assume it was about the speed limit."

And you were referring to the New York State Thruway at that time. Did you give that answer to that question in August 1972?

A Yes, sir.

Q And then the next question:

"Question: What was the speed limit?"

"Answer: On the thruway I believe it is 60 or 65 miles an hour."

Did you give that answer to that question?

A Yes, sir.

Q Now, did you know anything about a third vehicle involved, a vehicle owned and operated by the Stones? Did you know anything about that up to the time that you saw this guard rail and saw the bus?

A No, sir.

Q You found out about that later?

A Correct.

Q What kind of tires did you have on the back of your car, Mr. Weiner?

L. Weiner-direct

A Studded snow tires.

Q Will you tell the Court and jury what are studded snow tires?

A A snow tire is a tire that has a deeply cut tread for biting into the snow. Studded refers to the fact that there are little tungsten carbide tipped studs that stick out of the tire for gripping better on ice.

Q What kind of tires did you have in the front of the car, Mr. Weiner?

A Well, I am not even sure I remember the brand name right now, but I believe they were purchased that fall.

Q That would make them relatively new tires, Mr. Weiner?

A I think so. Conventional size tire for the car, whatever it was. I don't recall right now.

Q Do you have any memory of the condition of the roadway on Route 149 any time after you got on it?

A No, sir. I woke briefly-- Well, I awoke briefly when we got off the northway and got onto Route 149, and at that time it was snowing lightly.

Q Do you have any knowledge or remembrance of the condition of the roadway shortly before this accident?

A No, sir.

Q When you woke up and saw the guard rail?

L. Weiner-direct

A No, sir.

MR. SPATT: No further questions.

MR. ZAWACKI: I have no questions, your

Honor.

MR. CAMERON: Just a few questions.

CROSS EXAMINATION

BY MR. CAMERON:

Q Mr. Weiner, how long have you been in this courtroom the last week, prior to giving your testimony on the stand today, approximately?

A How long was I in this courtroom?

Q Right.

A I was here on Monday, Wednesday and Friday of last week, and this morning.

Q For three or four days, correct?

A Correct.

Q During that period of time did you have occasion to read the transcript from your examination before trial that was taken in this court on August 3, 1972?

A No, sir.

Q Have you had occasion to read that transcript from the time you gave that testimony up until the time you came here to court today?

A Yes, sir, shortly after I gave the testimony

L. Weiner-cross/Cameron

I received a copu of it in the mail that I had to sign, and I guess have notarized, attest to its correctness.

Q Did you make a copy of that transcript?

A No, I did not, sir.

Q When did you receive that transcript after the examination taken back in August of '72?

A I don't recall.

Q So it is your testimony that you have not seen that transcript in effect for over two years, correct?

A That's correct.

Q The testimony you gave here today was based on your recollection of this accident?

A Correct.

Q At that examination before trial, do you recall being asked this question and giving this answer, this is from the EBT of Mr. Weiner, page 15, line 13:

"Question: What was the first knowledge you had that an accident was about to take place?

"Answer: I was sleeping in the front seat at the time. I woke up. I was lying down at the time. I started to get up and I saw a guard rail on the right-hand side approaching. I felt we were going to hit it but I didn't feel the impact. Then I saw the front of the Greyhound bus, and that's all."

L. Weiner-cross/Cameron

Do you recall being asked that question and giving that answer?

A No, not precisely that question and that answer, but yes, a question like that, and that answer.

Q And you have not read that transcript prior to coming to court today?

A Correct.

Q Would you agree that that answer at that examination before trial was almost verbatim with what you gave from the stand about five minutes ago?

A It sounds pretty much the same. I was relating the same thing.

Q Almost word for word, correct?

A I don't know. It's a simple statement.

Q This examination before trial was held, it was held about five months after the accident, correct?

A Yes.

Q And right now it is almost three years after the accident.

THE COURT: Was it in '72?

MR. CAMERON: A year and five months after.

Q Is your memory better today as far as this accident occurring or was it better back on August of 1972 when this examination before trial was conducted?

L. Weiner-cross/Cameron

A I would say my memory of those circumstances is pretty much the same.

Q On page 16 of that examination you were asked this question:

"Question: When you woke up was there a radio on?"

There was an objection.

"In the automobile he said he woke up."

Your answer is on line 20: "I don't remember the time span in which all this happened. It was rather short and I don't think I got fully up. I remember seeing the dashboard halfway, and that's what I hit."

Do you remember being asked that question and giving that answer?

A Yes, sir. I can't precisely say I recall the wording, sir, of the question and answer.

Q Let me ask you this, Mr. Weiner: Based on your recollection of this accident, from the time that you were first conscious of that guard rail, and then I believe you told us after that you saw the Greyhound bus, and those were the two fragmented things you remember as far as this accident, correct?

A Yes.

L. Weiner-cross/Cameron

1
2 Q Do you recall the contact between the vehicle
3 that your wife was driving and the guard rail?

4 A No, sir.

5 Q Do you recall any contact between the vehicle,
6 I'm talking about your vehicle, and the Greyhound bus?

7 A No, sir.

8 Q Do you have any recollection as to the distance
9 between your car, the vehicle you were a passenger in, and
10 the Greyhound bus?

11 A When I saw the Greyhound bus, it was very
12 close.

13 Q Would it be fair to say that all these events
14 happened in a matter of seconds?

15 A I would suppose that's fair.

16 Q When you saw that Greyhound bus---

17 Question withdrawn.

18 The first thing you recollect was your wife
19 was going to the guard rail, correct?

20 A Correct.

21 Q The next thing was the Greyhound bus?

22 A Correct.

23 Q You were still conscious at that time, correct?

24 A I saw the Greyhound bus; I must have been.

25 Q Do you know how much time elapsed between

1
2 those two impressions in your mind, the guard rail and the
3 Greyhound bus?

4 A No, sir.

5 Q Would it be fair to say that those two
6 sequences of events were had at the same time?

7 A I would think so.

8 Q Do you recall what rate of speed your wife
9 was proceeding at when you saw the guard rail?

10 A No, sir.

11 Q Were you able to approximate the speed of
12 the Greyhound bus?

13 A No, sir.

14 Q As far as your recollection of the Greyhound
15 bus, you would say it was a short distance away?

16 A It was very close.

17 Q It wasn't down the roadway 600 feet, 100 feet?

18 A No, sir.

19 Q You told me you do not recall the impact
20 between your vehicle and the Greyhound bus?

21 A That's correct.

22 Q With regard to the Stone vehicle that was
23 involved in this accident, is it not a fact that you were
24 not even aware of that until you got the police report?

25 A Correct.

L. Weiner-cross/Cameron

1
2 Q So you have no recollection of any impact or
3 second impact between your car and the vehicle operated by
4 Mr. Stone, correct?

5 A Yes.

6 Q You don't know whether an impact occurred,
7 is that correct?

8 A Correct.

9 Q Only what you were able to learn later,
10 physical facts, what pictures you saw?

11 A Correct.

12 Q Shortly after seeing the bus, did there come
13 a period of time that you became unconscious?

14 A Quite sure of it. There was a period there
15 that I don't remember clearly.

16 Q Was there a period of unconsciousness from
17 the time you perceived the guard rail and the time you
18 perceived the Greyhound bus?

19 A I don't know.

20 Q I'll ask you some of the same questions
21 I asked your wife the other day.

22 Prior to the happening of this accident, had
23 you ever had an occasion where, with your head, you had
24 mental lapses?

25 A No.

L. Weiner-cross/Cameron

Q And subsequent to the accident were there occasions, periods when you didn't recall events?

A No, sir.

Q Only this particular accident?

A Correct.

Q Do you recall being asked this question,

page 17, line 11:

"Question: In between the time of seeing the front of the Greyhound bus and being removed from your car by some unknown people, you have no other recollection of anything in that intervening period; is that correct?

"Answer: Right.

"Question: When you saw the Greyhound bus in front of your car, which side of the roadway was your car on?

"Answer: I don't know. All I have is a picture of the Greyhound bus. I don't know where anything was."

Do you recall being asked those two questions and giving those two answers, or substantially the same answers?

A I don't really remember being asked or giving those answers, but they are correct.

L. Weiner-cross/Cameron

Q Do you recall being asked this question on page 18, line 7:

"Question: Prior to waking up, were you on 149 when you went to sleep?

"Answer: I was sleeping on and off most of the way up. I was sleeping before we got on 149, but just before we got onto 149 I was awak to direct us onto 149, then I went to sleep after we got on 149."

Do you recall that question and that answer?

A Again, not precisely. It's correct nonetheless.

Q There was a word in there that's surprising. You directed the bus onto 149.

THE COURT: The what?

THE WITNESS: He read the question--

MR. CAMERON: "Directing us," and by "us"

I take it that you are directing your wife.

THE WITNESS: Yes.

Q Do you recall what the weather conditions were that day? Do you recall the weather conditions that day?

A Insofar as it was not snowing when I started driving. It was snowing when we got off--

L. Weiner-cross/Cameron

Q I show you this statement, Mr. Weiner, and ask you to look at it, and I ask you, No. 1, whether you signed it. This is a photostat copy, your Honor.

A Yes, that's my signature.

Q Did you have it notarized?

A Yes, sir; it's notarized.

Q Did you read it before you signed it?

A Yes, sir.

Q Did you swear to the truth of it? Did you swear to the truth of that affidavit?

THE COURT: I think Mr. Cameron's question--

Q Did you swear to it when you signed it?

A Yes.

Q After looking at that statement, does that statement refresh your recollection as to when and where you signed it?

A Yes, sir.

Q Do you know who prepared it?

A I did.

Q Is that the same type of affidavit you prepared for your wife?

A Yes, sir.

Q And for what purpose did you prepare that affidavit?

L. Weiner-cross/Cameron

1
2 A If I recall correctly, there was a Motor
3 Vehicle hearing up in Albany. We were requested to go
4 up there.

5 I contacted the Motor Vehicle Commission.
6 They said if we submitted affidavits, what we remember of
7 the accident, that would suffice.

8 Those are the affidavits we made up.

9 Q Did you retain a copy of this affidavit for
10 you and your wife?

11 A I'm not sure. I don't know.

12 Q And the date on this, is it not October 15,
13 1971?

14 A Yes, it is.

15 Q And aside from that date when you signed it,
16 do you recall when was the last time that you read this
17 affidavit?

18 A Then, when I signed it and prepared it.

19 Q And you did not retain a copy for yourself
20 or your wife?

21 A I don't know. I would have to go back and
22 look at my records to see if there is one there.

23 Q Were you ever supplied a copy for your
24 lawyers?

25 A No.

L. Weiner-cross/Cameron

Q You were aware at that time that there was litigation pending, was there not?

A Yes.

Q And you never turned a copy of this affidavit over to Mr. Zawacki, your attorney in this lawsuit?

A I don't believe I did.

Q But you saw fit to prepare this affidavit for the Motor Vehicle Bureau, but you never saw fit to prepare a copy and give it to your lawyer who was defending you?

A I saw fit to give it to the Motor Vehicle Bureau. They asked me for it.

Q Did you ever see fit to retain a copy for your lawyer?

THE COURT: No, he has testified that he didn't give it to his lawyer.

A Whether I have a copy or not, I'm not sure. Mr. Zawacki never asked me for that or any other papers.

Q On the last line on this statement, "I was feeling ill and awoke only long enough to give Barbara directions at the turning points."

I withdraw that. I want to read the statement to the jury.

MR. ZAWACKI: I'll object to the reading of any statement to the jury. I haven't seen that

L. Weiner-cross/Cameron

statement.

THE COURT: That is tantamount to an offer of it in evidence.

Do you so offer it?

MR. CAMERON: I offer it.

MR. ZAWACKI: May I see it?

THE COURT: Could you show it to counsel, please.

MR. ZAWACKI: No objection. I don't see the relevancy to it.

THE COURT: I understand it's offered because he's a party that signed it.

MR. ZAWACKI: It doesn't add anything to the case.

THE COURT: It's cumulative.

MR. ZAWACKI: It's what he said.

THE COURT: It may be received. It doesn't contradict anything, but it does somewhat fill out one point covered in the testimony.

THE CLERK: Now Defendant Cameron's Exhibit G, in evidence.

MR. CAMERON: Your Honor, can I have five minutes? I have seven pictures in evidence.

THE COURT: You had them in your hand a

L. Weiner-cross/Cameron

MR. LEVITT: Before I cross-examine I would like to come up to your Honor. I don't want to ask us any questions that might get us into trouble.

(Whereupon a sidebar conference was had.)

(The following occurred in open court.)

BY MR. CAMERON:

Q You told the jury, Mr. Weiner, that you prepared this statement and you signed it on October 13, 1971. Now will you please read it to the jury.

A "To Whom it May Concern:

"On March 7, 1971, I was involved in the accident between our car, a 1964 Imperial, MYR 300, and a Greyhound bus. I was sleeping in the front seat at the time, and have only two fragmentary recollections of the accident, those being of a guard rail on the right and a vivid memory of seeing the front of the bus. I cannot myself put these in any context of the accident. However, they do fit the accident as described on the police report. I have no recollection of the stopped Volkswagen and in fact was not aware of its involvement until seeing a copy of the police accident report in the hospital.

"Prior to the accident, we left our home

L. Weiner-cross/Cameron

1 in New Jersey en route to Vermont for a vacation,
2 and Barbara started driving on the New York Thruway
3 south of Albany. I was feeling ill and awoke long
4 enough to give Barbara directions. I have no
5 knowledge of the circumstances of the accident.
6

7 "Respectfully," my signature.

8 Q Now, Mr. Weiner, I believe you told us before
9 that since the time that you prepared this you have not
10 read this statement except when you were here.

11 A Yes.

12 Q The same with your examination before trial.
13 You saw it, the signing, you hadn't seen it at all this
14 week?

15 A That's correct.

16 Q Now, in this statement you state you only
17 have two fragmentary recollections of the accident.

18 A That's correct.

19 Q Do you recall being on the stand before?
20 You used that same phrase, "fragmentary recollection of
21 the accident." Do you recall stating that before?

22 A I don't recall. I don't recall saying it, but
23 I don't dispute that I did.

24 Q The only thing you do remember is the guard
25 rail and seeing the bus; is that correct?

L. Weiner-cross/Cameron

1 A Yes, and called them fragmentary. There
2 are two photographs I remember seeing. It's the reason why
3 I use the term fragmentary.
4

5 Q In this statement, the other thing you recall,
6 "a vivid memory seeing the front of the bus."

7 Do you recall before you used that same
8 phrase?

9 A Did I say "vivid"?

10 Q You used the word "vivid."

11 A O.K.

12 Q You never saw this statement since the day
13 you signed it?

14 A That is quite correct.

15 Q Mr. Weiner, I show you these photographs which
16 have already been introduced in evidence, and ask you whe-
17 ther they fairly--

18 THE COURT: Give the numbers so the record
19 will show.

20 Q These first two photographs are Defendant's
21 B-3 and Defendant's Exhibit B-5, and I ask you whether
22 those pictures depict your vehicle at the scene of the
23 accident.

24 A I don't know. I never saw it, never seen any
25 photographs of it.

L. Weiner-cross/Cameron

1
2 Q Do you recall your vehicle, what it looked
3 like prior to this accident?

4 A Yes, I do.

5 Q Did you see your vehicle at any time prior
6 to the accident?

7 A No.

8 Q Looking at that picture, and expressly in
9 particularly the plate on that car, would you say that's
10 a picture of your vehicle immediately after the accident?

11 A I believe so. I wouldn't say "immediately."
12 It seems to be someplace else, and there is equipment in
13 the car--that's in the car that wouldn't have been in the
14 car.

15 Q Sometime after the accident?

16 A Yes.

17 Q I believe you testified, or your wife testi-
18 fied, that it was a 1964 Chrysler.

19 A Correct.

20 Q And when did you purchase that car?

21 A It was three and a half years old when
22 I bought it, and that would make it in 1967 or '68.

23 Q I believe your wife said '68 when she
24 testified.

25 A It may not be right, but it would be fair.

L. Weiner-cross/Cameron

Q With regard to the rear wheels on that car, they were studded; there were snow tires and they were purchased six months prior to this accident, September 1970?

A I don't believe so.

THE COURT: He didn't say anything about when the snow tires were bought.

Q When did you purchase the rear tires on your vehicle prior to this accident?

A I believe I had purchased them the beginning of the winter previous to that. I used them through that one winter, removed them for summer driving, and re-installed on another vehicle.

Q You purchased them in 1969, sometime?

A '69, '70.

THE COURT: Winter of '69-'70?

THE WITNESS: Yes, sir.

Q Now, how about the front wheels on your car, when did you purchase them? Were they the same wheels that came equipped with the car in 1968?

A No.

Q How old were the front wheels on the car?

A I stated I believe they were purchased that fall.

Q So the front wheels were only about--give or

L. Weiner-cross/Cameron

take, six months old?

A To the best of my recollection. I may be incorrect.

Q I show you these two pictures marked Defendant's Exhibit B-4 and Defendant's Exhibit B-1. May I show these to the jury as I'm examining?

THE COURT: Sure.

Which of those is the witness examining?

MR. CAMERON: B-3 and B-5.

THE COURT: And the ones that Mr. Weiner is looking at?

MR. CAMERON: B-4 and B-1.

Q I show you these pictures, Mr. Weiner, and ask you whether those pictures depict your left front wheel.

A They seem to.

Q And in particular is that the tire that was on the left front side of your vehicle immediately before this accident?

A I don't know. I could assume so, but I can't say I recognize the tires as being the tire that was there.

Q But there is no doubt, as far as you know, no one took the wheels off your car and changed them after the accident?

MR. ZAWACKI: Object. How would he know?

L. Weiner-cross/Cameron

He's in the hospital.

THE COURT: He has no data at all, is that it?

Q As far as you know, they were the tires on your car; is that correct?

A Yes.

MR. CAMERON: I ask that these be shown to the jury too, your Honor, B-1 and B-4.

(Jury examines exhibits.)

Q Now, Mr. Weiner, I show you Defendant's Exhibit B-6, and I ask you whether this picture fairly and accurately depicts the right front wheel on your vehicle--

MR. ZAWACKI: Now, I object to all this. I thought that Mr. Cameron made a mistake. There are five pictures of one tire, all the same tire, not one right and one left.

THE COURT: I think that's not quite so.

MR. ZAWACKI: That's the same picture that's been circulated among the jury.

THE COURT: As I recall, one of them you can't see as much wheel by any manner of means; is that right? As I recall, the right front tire is fairly visible.

MR. CAMERON: Offer this picture there.

L. Weiner-cross/Cameron

That's the right front wheel.

MR. ZAWACKI: Before we get to a shuffle, can we have these pictures back?

MR. CAMERON: The pictures I showed to the jury represent the left front; if I'm wrong, I apologize.

MR. ZAWACKI: Can we find this out?

THE COURT: Yes, if you look at the pictures. B-3 and B-5 are the ones that were circulated to the jury.

MR. CAMERON: I don't think there is concern with B-3 and B-5. There is no contention as far as that's concerned.

MR. ZAWACKI: These five pictures are shot of the right front wheel on the car and the same tire.

THE COURT: May I see those five pictures?

MR. CAMERON: Sure (hands to the Court).

MR. ZAWACKI: These two will help you come to a conclusion, your Honor. (Hands to Court)

THE COURT: I think if you will concentrate your attention on that picture, you'll agree with Mr. Zawacki.

MR. CAMERON: Maybe I was mistaken; they

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1 L. Weiner-cross/Cameron

2 are all on the right side.

3 THE COURT: I think so. B-3 and B-5 show
4 as much as can be seen on that series of the left
5 wheel.

6 MR. CAMERON: B-1 and B-4, B-3 and 5 are
7 the general outline of the vehicle itself.

8 THE COURT: That's right. That one the
9 jury saw before.

10 Q Will it be fair to say that these pictures,
11 the five I'm offering now, all depict your right front
12 wheel, and they are Exhibits B-2, B-6, B-1 and B-4?

13 A Yes, sir, I would agree.

14 MR. CAMERON: I have no further questions.

15 MR. LEVITT: I have no questions.

16 MR. SPATT: No questions, your Honor.

17 THE COURT: All right, Mr. Weiner, you
18 may step down.

19 (Witness excused.)

20 ---
21
22
23
24
25

302

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ALAN VANCE WEINER,

Plaintiff,

-against-

BARBARA WEINER,

Defendant.

:

:

:

:

71 C 1177

-----X

United States Courthouse
Brooklyn, New York

September 30, 1974
10:00 o'clock a.m.

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.

HENRI LE GENDRE
ACTING OFFICIAL COURT REPORTER

Appearances:

ARTHUR D. SPATT, ESQ.,
Attorney for Plaintiff

SAMUEL LEVITT, ESQ.,
Attorney for Defendant Greyhound

STANLEY W. ZAWACHI, ESQ.,
Attorney for Defendant Weiner

JAMES CAMERON, ESQ.,
Attorney for Defendant Stone

RONALD BROWN, having been called as a witness
was duly sworn by the Clerk of the Court and
testified as follows:

DIRECT EXAMINATION

BY MR. SPATT:

Q Mr. Brown, you have been in court since the
beginning of the trial, sir?

A Somewhat, yes.

Q Were you here when we picked a jury?

A No sir, I was not.

Q Were you here when the opening statements were
made?

A Yes, I was.

Q And from that point on you were here?

A Yes sir. I was outside.

Q You were outside?

A Yes.

Q In other words, during some of the testimony
you were outside and some you were inside?

A Yes sir.

Q Are you an employee of the Greyhound Bus Line?

A Yes sir.

Q You are still an employee of Greyhound?

A Yes sir.

Q Now, at the time of this accident, Mr. Brown,

1
2 how long had you driven a bus for the Greyhound Company?

3 A Approximately four and a half years.

4 Q Will you take a look at this paper, Mr. Brown,
5 please, and --- may I approach the witness, your Honor?

6 THE COURT: Yes.

7 Q And see if that refreshes your recollection
8 as to how long you drove a bus before this accident, just
9 yes or no, see if it refreshes your recollection. I am
10 appointing to a specific entry here?

11 A No, it does not, sir.

12 Q What paper is this that I'm referring to?

13 A Photostatic copy of the Greyhound accident
14 report.

15 Q And on that report does it have driving
16 experience by type of vehicle, and then it has a place for
17 buses and how many years and months you drive. You have
18 experience with buses; is that right?

19 A Yes.

20 Q And is this your signature on the second page
21 of that report?

22 A Yes sir, It is.

23 Q And when you signed that report, did you read
24 this report?

25 A Yes sir.

Q Would that then, the figure that you were driving a bus, you say the one on this report is not correct; is that so?

THE COURT: He said it didn't refresh his recollection.

MR. SPATT: I see.

THE COURT: He wasn't asked whether it was right or not.

Q Was it correct that you were driving three years and nine months at the time of this accident?

THE COURT: Driving a bus?

Q Yes sir, a bus.

A Just a little more than that, sir.

Q This bus that you were driving at the time of the accident, is that what they call a chartered bus?

A Yes sir.

Q And although it was a chartered bus, is it the same type of Greyhound bus that we see on the road, the large buses?

A Yes sir.

Q You were at the time this weekend before the accident, were you taking a ski group to Killington, Vermont?

A Yes sir.

Q And when did you leave and where did you leave?

1
2 A I left Rochester, New York on Friday evening.

3 Q And the accident happened on Sunday?

4 A On Sunday, yes.

5 Q When you left Rochester, New York, did you have
6 with you a group of persons who were going to be with you?

7 A Yes sir.

8 Q How many people did you have?

9 A Approximately 22.

10 Q You took them up to Killington, Vermont on
11 Friday night; is that correct?

12 A Yes sir.

13 Q What did you do during the weekend before that --
14 I mean after Friday night, between Friday and Sunday, what
15 were your duties during that time?

16 A I dropped the group off at the ski lodge in
17 Killington and then I drove the bus back to Rutland, Vermont,
18 and I found a hotel for myself.

19 Q And did you spend Friday night and Saturday
20 night at this hotel in Rutland?

21 A I spent Friday night at the hotel in Rutland
22 and I spent Saturday night at a hotel in Killington.

23 Q At that time did you have a male companion with
24 you at that time?

25 A I did.

Brown-direct

1
2 Q And this gentleman accompanied you on the trip;
3 is that correct?

4 A Yes.

5 Q And stayed with you at the -- at both motels
6 that we are referring to?

7 A Yes.

8 Q What was this gentleman's name?

9 A Frank Dominick.

10 Q Was he an employee of the Greyhound Company?

11 A He is not.

12 Q Just a personal friend of yours?

13 A Yes sir.

14 Q And then was this Frank Dominick with you on
15 the bus at the time of this accident?

16 A Yes sir.

17 Q And was he with you in close proximity to where
18 you were sitting at the time of this accident?

19 A I believe he was sitting on the right-hand side
20 of the bus.

21 Q In the front seat?

22 A Yes.

23 Q On your way back to Rochester that's where you
24 were going; is that right?

25 A Yes.

Brown-direct

Q This is a Sunday late in the afternoon?

A Yes sir.

Q What time did you leave Killington, Vermont to go back to Rochester?

A Approximately 2:30, 3:00.

Q And this bus that you were driving, could you tell the Court and jury how long this bus was?

A Approximately 38 feet.

Q How wide was it?

A Approximately seven and a half to eight feet, approximately.

Q And how much did it weigh empty or loaded, or any way that you can tell us?

A It weighed approximately 28,000 empty.

Q How much did it weigh approximately with the 22 people and their luggage and ski equipment and everything else they had?

A I wouldn't know, sir.

Q Did you ever testify that the bus weighed about 50,000 pounds?

A Yes, I did.

Q Is that true that the bus weighed about 50,000 pounds at the time of this accident?

A No sir.

1
2 Q Well, is that true?

3 A Well at the time that this testimony was given
4 I had a lot of things going through my mind. I don't know
5 why I made that statement.

6 Q In any event, can you tell us what the correct
7 weight of the bus was approximately -- I don't mean in pounds --
8 you didn't weigh it. I mean approximately?

9 A Approximately 28,000 empty. I couldn't tell
10 you what it weighed loaded.

11 Q How many tires were on this bus?

12 A Six.

13 Q And that would be where located?

14 A Two tires in the front.

15 Q One on each side?

16 A Yes.

17 Q So you have a single left front and a single
18 right front; is that correct?

19 A Yes sir; four tires in the rear, two on each
20 side.

21 Q Two on each side?

22 A Yes sir.

23 Q Now, this bus, what kind of a bus was it --
24 model bus?

25 A The model of the bus is a MC5.

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Brown-direct

Q Who made this bus?

A Greyhound.

Q Greyhound made the bus, owned it and operated it;
is that correct?

A I would say so.

Q What road did this occur on, Mr. Brown?

A On Route 149.

Q And had you ever been on Route 149 before this
accident?

A Just one time on the way up.

Q That was on the Friday night?

A Yes.

Q Was it dark when you went up the road Friday
night?

A Yes sir.

Q So the first time you were going during the
day was the time of this accident?

A Yes sir.

Q Would it be fair to say that you are not
familiar with this road?

A It would be fair.

Q This was a two-lane road, east and west; is
that correct?

A Yes sir.

Brown-direct

Q What direction were you going in?

A I was traveling west.

Q And how wide was the travel portion of the road-way?

A Ten feet.

Q Your lane was ten feet wide?

A Yes sir.

Q And were the lanes divided by anything.

THE COURT: Two lanes?

Q Yes sir, the two lanes.

A I don't understand the question, sir.

Q Well, there is a lane going west, the way you were going; is that correct?

A And a lane going east.

THE COURT: Were there any road markings along the lengthwise of the road.

THE WITNESS: Yes sir, there was.

Q What were the markings?

A I believe it was the yellow lines.

Q Single yellow or double?

A I wouldn't know.

Q Will you take a look at this photograph, please, Plaintiff's Exhibit 3 in evidence, and see if that photograph refreshes your recollection as to whether there was a

Brown-direct

double yellow line at the point leading up to, in the direction you were going and at the point where the accident occurred around a slight curve?

A This picture shows a double line but at the time of the accident the lines were very vague.

Q I understand that.

Is this the place where it happened or leading up to the place where it happened, if you don't know say you don't know, Mr. Brown; don't guess?

A I can tell from this picture.

Q You told this Court and jury that you didn't know what divider or what marking divided the east and west-bound lane? Is that correct?

MR. LEVITT: He didn't say that.

Q You said you didn't know whether it was a single or a double yellow line; is that correct?

A Yes sir.

Q And is that because you never saw any center line dividing that street at anytime approaching the place where the accident occurred?

MR. LEVITT: I'll object to that, if your Honor please. I respectfully object to that as an improper question.

THE COURT: I think he's being asked the

Brown-direct

question direct.

Were you able to see whatever lane dividing markings there were, if there were any.

THE WITNESS: The answer to that is that I noticed a marker going down to the center of the road but just what it was in detail I couldn't recognize it.

Q And you were able to notice a marker in the center of the road; is that correct?

A Just a spot.

Q And was there any slush on the road as you were driving along west towards the place where the accident occurred?

A Yes sir.

Q And did that slush partially, at least partially obscure any or some of the center markings of that road?

A Yes sir.

Q I want you to take a look at some photographs, please; and for example, I'll show you Plaintiff's Exhibit 1E in evidence, which is a picture of the road looking west from in back of your bus. Will you take a look at that photograph, please and tell me was the condition of the roadway at the time that photograph was taken, which was testified to, was at least an hour or more after the accident, was the condition

Brown-direct

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2 of the roadway the same as it was at the time of that
3 photograph with regard to the slush or snow or anything like
4 that?

5 A I would say generally.

6 Q May I ask you, sir, whether you can see any
7 center marking on that photograph, Plaintiff's exhibit?

8 A Not at that particular point by the angle of
9 the picture.

10 Q I see. At that point is where you traveled
11 before the accident occurred; correct?

12 A Yes sir.

13 (Continued on next page)
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Brown-direct

Q You passed over that point; is that correct?

A I can't tell from this picture, sir, if I was sitting up.

Q If the picture shows the back of the bus, if the picture is facing west and shows your bus in the picture, that's the point that you traveled through, wasn't it?

A Also if there is a lot of different markings on the road where people have walked.

Q But I'm asking you this question. Looking at that photograph, Plaintiff's Exhibit 1B, you have told this Court and jury that the covering on the road, the slush, muck or the snow, whatever it is is about the same as it was at the time of the accident; is that correct?

A Yes.

Q And there is no question in your mind, is there Mr. Brown, that you passed over that point just before this accident occurred?

A No sir.

Q So that you went over that part of the road that's shown in that particular picture; is that correct?

MR. LEVITT: Objection, repetitious.

THE COURT: Let's move along.

Q If you look through the rest of these pictures that I have, would you be able to show me the picture here

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Brown-direct

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2 that shows the center marking on this road.

3 THE COURT: Those are all the March 7th pictures.

4 MR. SPATT: Just the March 7th pictures. Those
5 are 1A, 1F, 1B, 1C and one that I can't make out.

6 THE CLERK: Just 1.

7 Q On any of those pictures can you see the center
8 line on that road, Mr. Brown?

9 A Not from these pictures.

10 Q In all fairness, Mr. Brown, might it be that
11 there was a snow that fell after the accident and before
12 these pictures were taken that might have obscured the road
13 more than it was at the time of the accident?

14 A This one I couldn't tell but not the other ones.

15 Q The other one looks the same it was at the time
16 of the accident. Which one, couldn't you tell? You are
17 referring to Plaintiff's Exhibit 1B, that's the one you feel
18 might be different?

19 A It could be.

20 Q The other pictures you say were the same as
21 at the time of the accident?

22 A Yes sir.

23 Q So that was the vision you had of the center
24 line as is set forth in those pictures; isn't that correct?

25 A In these particular pictures, yes.

Brown-direct

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2 Q Then you are coming down on Route 149; is that
3 correct?

4 A Yes sir.

5 Q It is a curve the road; is that so?

6 A Yes sir.

7 Q It is a hilly road; is that so?

8 A Yes sir.

9 Q Is it a road that is lined with shoulders that
10 have snow banks along the side; is that correct?

11 A Yes sir.

12 Q And you are driving a bus that is 38 feet long
13 and seven and a half to eight feet wide; is that correct?

14 MR. LEVITT: This is repetitious. We have gone
15 through this, the size of the bus.

16 MR. SPATT: I am just laying the foundation
17 for something, your Honor.

18 Mr. Brown, Were you on the right-hand side of
19 the road before this accident occurred?

20 THE WITNESS: Yes sir.

21 Q If you were on the right-hand side of the road
22 and your line was ten feet wide, you would have approximately
23 a foot or a foot and a quarter of space on each side of your
24 bus; is that correct?

25 A Yes sir.

Brown-direct

Q And that would be a rather narrow fit?

MR. LEVITT: I object to that.

THE COURT: It's what it is.

Q Now, may I ask you this, Mr. Brown, when you proceeded from Killington, you got onto Route 149, was it at Fort Ann Village?

A I don't know where Fort Ann is.

Q Where did you get on Route 149?

A I picked up Route 149 just off of Route 4.

Q And from the time you got onto 149 was the vehicular traffic going west, the same direction you were going? Was there a lot of traffic? Was there little traffic?

A There wasn't much traffic.

Q In fact, Mr. Brown, do you remember any other car or vehicle in front of you also going west towards the point where the accident occurred?

A I don't remember.

Q Was there any car in front of you as you were proceeding west for a mile before the accident happened?

A I don't remember.

Q And in any event, was there a car in front of you within two or three or four minutes of this accident, going in a westbound direction?

A No sir.

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Brown-direct

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2 Q So that you were the only car at that point
3 going in a westbound direction; is that correct?

4 A That's correct.

5 Q And at that point, do you tell this Court and
6 jury that you were on the right side of the road with no car
7 in front of you?

8 A Yes sir.

9 Q And was there any vehicular traffic coming in
10 the opposite direction for five minutes before this accident?

11 A I don't remember this, sir.

12 Q Before you saw any danger or before you saw
13 the Weiner vehicle --

14 THE COURT: Which question do you mean to ask?

15 Q Before he saw the Weiner vehicle, can you tell
16 this Court and jury whether the left wheels of your bus were
17 over the center line of the road before you saw the Weiner
18 car?

19 A It was not.

20 Q And you say it was not. Is that an approximation
21 by you or did you see the yellow line or lines and know that
22 you were not over those lines?

23 A I knew that I wasn't over those lines, sir.

24 Q Because you saw the lines?

25 A Not because I saw the lines.

Brown-direct

Q Because you estimated that you were not?

A Because I was hugging the right side of the road. I could distinguish the roadway from the shoulder and the snow bank.

Q And you therefore say that you were on the right-hand side of the road, not because of any vision of the center lines but because you were hugging the right-hand side of the road.

MR. LEVITT: I object to that as argumentative.

THE COURT: Please do not repeat the answers.

The witness has testified.

Q Now, it was not snowing at the time of this accident; is that correct?

A That's correct.

Q And the weather you would consider to be fair at the time of the accident?

A Yes sir.

Q Were your windshield wipers on?

A No sir.

Q Was visibility good at the time of this accident?

A Yes sir.

As a matter of fact did you make a statement on two occasions under oath that the road looked like it had been plowed?

Brown-direct

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2 A Yes sir.

3 Q That's how clear the road was you testified; is
4 that correct?

5 A I based that statement on my own feelings. When
6 I left Killington, Vermont I was in a snow storm. I'm talking
7 about a foot and a half to two feet of snow.

8 Q When you got on the road --

9 MR. LEVITT: He hasn't finished his answer.

10 A (Continuing) When I turned onto Route 149 it
11 was a relief to see the road.

12 Q It was clear?

13 A It was clear, just how long I don't know, but
14 it was plowed, some of it was plowed.

15 Q The shoulder of the road that had the guard
16 rail on it as you came around the curve, how wide would you
17 say that shoulder was?

18 A Approximately three, four feet.

19 Q And did it have snow on the shoulders?

20 A It had generally wet slush.

21 Q Was that a flat kind of wet slush or as some-
22 body described it, I believe Mr. Stone in his examination
23 before trial, I believe he said a snow bank?

24 A There was snow piled up against the guard rails.

25 Q But that snow bank or snow pile against the

Brown-direct

guard rails, it did not come out near the road?

A Did not come out near the highway.

Q Still on the road, still on the shoulder?

A It was generally --

Q Was there any snow piled alongside the edge of the travel roadway?

A No sir.

Q Now, what was the speed on that road as far as you know?

A As far as I know 55.

Q What did you base that on, Mr. Brown.

A The state speed limit at the time.

Q You were familiar with the state and federal limits as 55 miles an hour?

A On principal highways, yes.

Q Did you ever tell anybody that you believed the speed limit was 35 miles and hour?

A Yes, I did.

Q When did you do that?

A I believe I made that statement at the Motor Vehicle Hearing in Albany.

Q You had an opportunity to read your record, the hearing of Motor Vehicle -- you sound like you are familiar with your answer. You have had an opportunity to

Brown-direct

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2 read that in the last few days?

3 A No sir, I have not.

4 Q You never read the transcript?

5 THE COURT: He wasn't asked that.

6 Q The last few days I'm talking about?

7 A No sir.

8 Q Have you ever read the transcript of the Motor
9 Vehicle Hearing?

10 A Yes, I have.

11 Q When did you read it?

12 A Approximately a year ago.

13 Q Now, what occasion was that you read the transcript
14 a year ago, Mr. Brown.

15 A When I went to trial for myself -- I'm sorry
16 for Mr. Dominick (phonetic).

17 Q You were a witness for Mr. Dominick?

18 A Yes.

19 Q I don't have the first page of this Motor Vehicle
20 Hearing.

21 MR. LEVITT: I have it.

22 Q This Motor Vehicle Hearing was held on
23 November 3, 1971; is that correct?

24 A No sir, I don't recall the date.

25 Q If I told you that was the date on the transcript,

Brown-direct

would that refresh your recollection.

THE COURT: Did it sound about right to you, November of 1971, eight months after the accident?

THE WITNESS: I believe -- I think it's '72, but I couldn't be sure.

THE COURT: What's that?

THE WITNESS: 1972 but I couldn't be sure.

MR. SPATT: Can I get a stipulation or concession from your attorney?

MR. LEVITT: November 3, 1971.

THE COURT: That was the only hearing in which Mr. Brown was present?

MR. LEVITT: Yes.

Q Mr. Brown, did you, at that time, in November of 1971, would it be fair to say that your recollection as to the facts of this accident were clearer than they are now?

A Yes sir.

Q And did you give this answer to this question in November of 1971?

"Question: Do you know the speed limit in that area?

"Answer: I believe 35 miles an hour."

Did you answer that?

THE COURT: He just told us that.

Brown-direct

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2 Q What I want to find out, what was the basis for
3 your saying that at the time in November, 1971?

4 A The basis I said 30 to 35 miles and hour was
5 based on the highway itself.

6 Q I think I've confused you. I'm not saying what
7 speed you were going, I mean what was the speed limit. Your
8 answer to the question of the Referee at the Motor Vehicle
9 Bureau --

10 THE COURT: You asked him what it was based on,
11 he said it was based on his understanding of the highway
12 itself. In other words, what you mean, main highways
13 and subsidiaries.

14 THE WITNESS: Highway itself, general construction
15 of it. I based it on what I thought the speed limit
16 should be and I kept it generally around there. As
17 far as seeing a speed limit sign, I saw no speed limit
18 sign.

19 Q And how fast were you going just before you saw
20 anything, any other car or anything?

21 A Approximately 30, 35 miles an hour.

22 Q Could it be 35 to 40 miles an hour, Mr. Brown.

23 MR. LEVITT: He answered that question. He was
24 asked for the speed and he said he was going between
25 30, 35 miles an hour.

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Brown - direct

THE COURT: That's what he said.

Q Well, did you put in your report, this report to the Greyhound Bus Company that your speed -- when did you notice -- 30 to 40 miles an hour, did you put that in?

A I don't remember.

Q Will you take a look and see if that's what was put in, 30 to 40 miles an hour.

MR. LEVITT: At this time since counsel is referring to a paper not in evidence, I ask that it be marked in evidence so that the jury can see it.

THE COURT: No, because it may be part -- he's being asked here whether at an earlier time he had ascribed a different rate of speed to his travel on the road at the time of the accident. He may answer.

MR. LEVITT: Thank you.

THE COURT: Did you fill that in, 30 to 40.

THE WITNESS: It's filled in 30 to 40.

THE COURT: And that's your handwriting.

THE WITNESS: No.

THE COURT: You signed it.

THE WITNESS: I signed the form. I did not fill it out.

Q That's pretty close anyway, isn't it, Mr. Brown.

THE COURT: 30 to 40. You mean the same ball-

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2 park idea.

3 MR. SPATT: Yes sir.

4 Q Mr. Brown, when you first saw the Weiner car,
5 were you going downhill, were you going uphill or were you on
6 a steady level grade?

7 A I believe I was going on a downgrade.

8 Q And how far away from the Weiner car were you
9 when you first saw her, Mr. Brown?

10 A I don't know, sir.

11 Q Mr. Brown, November of 1971, were you asked
12 this question at the Motor Vehicle Hearing -- and by the way,
13 were you under oath at that time, Mr. Brown?

14 A Yes sir.

15 Q Page 8, "When you first saw her vehicle how
16 much distance was there between the two of you?

17 "A It is hard to say. I would say roughly 800 feet."
18 Did you testify to that effect at the Motor
19 Vehicle Bureau, yes or no, sir?

20 A Yes sir.

21 Q You remember saying that, don't you, Mr. Brown?

22 A Apparently I didn't take the question as what
23 it was said -- it was 800 feet from the top of the hill to
24 the point of impact.

25 Q So in other words when you answered this question

Brown-direct

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2 which the Motor Vehicle Referee put to you, not any of the
3 lawyers but the Referee, he asked you a question "When you
4 first saw her vehicle how much distance was there between
5 the two of you?

6 "Answer: It is hard to say, I would say roughly
7 800 feet."

8 You now tell this Court and jury that you meant
9 that it was 300 feet to the top of the hill ; is that correct?

10 A That's the way I took the question at the time,
11 sir.

12 Q Did you see the Weiner car pull off the right
13 and go off the road and hit a guard rail?

14 A Yes sir.

15 Q Was that an indication to you that there was
16 danger?

17 A Yes sir.

18 Q How far away were you from the Weiner car when
19 you saw the car pull off the road and hit the guard rail?

20 A Approximately 225 feet.

21 Q And if I may just repeat this with your Honor's
22 permission -- that was the danger signal when you saw the car
23 pull off the road and hit the guard rail; is that correct?

24 A Yes sir, that was my best estimate.

25 (Continued on next page)

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2 BY MR. SPATT:

3 Q But that was the danger, the danger was when
4 you saw the car pull off the road and hit the guard rail;
5 is that correct?

6 A Yes sir.

7 Q Where was the Weiner car with regard to the top
8 of the hill when you saw the Weiner car in danger?

9 A I don't think I can answer that. I don't
10 remember.

11 Q You testified that your impression is that it
12 was 800 feet from the point of impact to the top of the hill;
13 is that correct?

14 A Yes sir.

15 Q And where between the bottom of the hill and
16 the place where the impact occurred, and the top of the hill
17 did the Weiner car go off the road; near the top of the hill,
18 in the middle, the bottom, where in that area?

19 A I don't know, sir. I'm not familiar with that.

20 Q Now, is there an entry on this report which
21 states in printing "Location on roadway when danger noticed"
22 take a look at that and see if there is an entry "Location
23 on roadway when danger noticed".

24 A Yes, there is.

25 Q That's the rear form of the Greyhound Company;

Company; is it?

A Yes.

Q And does it have an entry where the bus was when the danger was noticed and where the other car, the Weiner car was when the danger was noticed? Does it have that down on that report?

A Yes sir, it does.

Q Where was the bus, your bus when the danger was noticed according to that report by the Greyhound Company signed by you?

A The bus was in the driving lane, traveling west.

Q And where was the Weiner car? Where was the Weiner car when you were in your lane traveling west? Where was the WEiner car when you first noticed the danger.

MR. CAMERON: Your Honor, I object.

THE COURT: As I understand the question called for in the form -- in other words, what is the question in the form and what the answer is all you're being asked at this point, Mr. Brown.

THE WITNESS: Location of the other vehicle, top of the hill.

Q So according to that --

THE COURT: What the heading on that?

THE WITNESS: ation in roadway when danger

Brown-direct

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2 noticed."

3 Q So when danger was noticed in regard to the
4 Weiner car, according to that report, the Weiner car was on
5 top of the hill and you were on the bottom; is that correct;
6 according to that report?

7 A According to the report.

8 Q And that distance you have told us was 800 feet
9 approximately; is that correct?

10 A Yes sir.

11 Q And were you in court when Sergeant Stannat
12 (phonetic) said it was 800 feet to the top of the hill to the
13 point of impact?

14 A I was not.

15 Q And what did you do when you saw danger?

16 A I immediately applied the brakes, pulled the
17 bus over to the right side of the road as far as I could go.

18 Q When you saw danger, you applied your brakes
19 and pulled your bus over to the right side of the road, as
20 far as you can go; is that right?

21 A That's correct.

22 Q Danger we know is when the Weiner car went off
23 the road; is that correct?

24 MR. LEVITT: That's been asked and answered too,
25 three times.

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2 THE COURT: He already told us that, yes.

3 Q Now, did you apply the brakes from that point
4 light up until the time of impact?

5 A That's correct.

6 Q When you moved to your right, did the bus respond
7 to the wheel?

8 A Yes sir.

9 Q And when you moved it to the right did you move
10 your wheel sharply to the right, gradually to the right, how
11 did you do that?

12 A I pulled the bus over (indicating) to the right-
13 hand side of the road just as far as I could to get out of
14 the way of the accident.

15 Q You pulled over to the right-hand side of the
16 road, Mr. Brown?

17 A Yes sir.

18 Q Not the shoulder, sir?

19 A On the shoulder. I was already on the right-
20 hand side of the road.

21 Q When you pulled over to the right-hand side of
22 the road, did you say that you then went on to the shoulder
23 of the road before any impact took place?

24 A Yes sir.

25 Q You were on the shoulder before any impact; is

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2 that correct?

3 A That's correct.

4 Q And were you touching the guard rail before
5 any impact took place?

6 A I don't remember, sir.

7 Q Now, did you keep your eyes on the WEiner car?

8 A Yes sir.

9 Q You didn't take your eyes off that car, did you?

10 A No sir.

11 Q What did the Weiner car do, Mr. Brown?

12 A From what point?

13 Q Let's take it from the point you first saw
14 the Weiner car?

15 A The car was coming down the hill (indicating)
16 went into the guard rail (indicating) on the right-hand side,
17 came diagonally across the road in front of the bus, fast.

18 Q How fast would you say it was going?

19 A How fast? I didn't hear the question.

20 Q How fast would you say the Weiner car was going?

21 A I have no idea.

22 Q Now, when the Weiner car came off the guard rail
23 it went diagonally across its eastbound lane and then crossed
24 the center lines and went into your lane; is that correct?

25 A Correct.

Brown-direct

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2 Q Now, at a point when the Weiner car crossed
3 the center line on its way across the entire road, how far
4 away was your bus from the Weiner car?

5 A Approximately 150, 200 feet would be my best
6 guess.

7 Q In your examination before trial which took
8 place in August, 1972 on Page 11, were you asked this
9 question and did you give this answer:

10 "Question: When the other car got into the center
11 portion of the roadway just before it crossed over into your
12 portion, where was your bus, how far from the car at that
13 time?

14 "Answer: Approximately 200 feet."

15 Did you give that answer to that question under
16 oath at this deposition?

17 A Yes sir.

18 Q And now you tell this Court and jury that it
19 was approximately 150 feet to 200 feet; is that correct?

20 A That's correct.

21 Q Did you discuss your testimony with your lawyer
22 before you got on the stand?

23 A Did I discuss what I'm going to say here?

24 Q Yes.

25 A I'm using my own words. We discussed --

Brown-direct

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Q I know that sir. Did you talk with your lawyer?

Did you go over your questions and answers that were likely to be asked of you when you got on the witness stand?

A Somewhat.

Q With Mr. Levitt and some other people from his office perhaps?

A Yes sir.

Q How many people would you say?

A Mr. Levitt.

Q Just Mr. Levitt?

A Yes.

Q And you read the transcript of your examination before trial?

A Yes sir. They were all approximations.

Q Did you go over that particular answer, Mr. Brown, how far away that Warner car was from the bus when it crossed the center line on its way in your lane? Did you go over that particular question and answer?

A Yes sir.

Q Now, when you saw danger, you testified that you applied the brakes; is that correct?

A That's correct.

Q And you applied the brakes firmly; is that correct?

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2 A Yes sir.

3 Q And your bus didn't skid at any time, did it?

4 A Had full control.

5 Q As a matter of fact the Weiner car did not skid
6 at any time; isn't that correct?

7 A Yes.

8 Q Just went off the road, hit the guard rail and
9 bounced off on a diagonal?

10 A That's correct.

11 Q It did not skid?

12 A Not that I remember.

13 Q Now, how far did your bus travel -- I know these
14 are all estimates -- to the best of your knowledge? How far
15 did your bus travel from the time you applied the brakes
16 until the time of the impact?

17 A Approximately 60 feet.

18 Q Well, on Page 23 of your examination before
19 trial, did you make this answer to that same question, Page
20 23 Line 18. -

21 "Question: From the time you applied your
22 brakes until the time of the accident, how many feet did your
23 bus travel?

24 "Answer: Approximately 70 or 80 feet."

25 Is that correct?

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2 A If it's there I said it.

3 Q Which is the best of your approximation, 60 feet
4 or 70 or 80 feet?

5 A When you have two moving vehicles coming to-
6 gether my own ability, although it's almost impossible to
7 estimate any footage when I gave these answers, some of them
8 I was being pressed for an answer at the time. When I gave
9 these answers this was my best guess at that time.

10 Q And is that your best approximation now, 60 feet,
11 from the time you applied your brakes until the time the
12 accident happened?

13 A I really don't know, it's just like I say, it's
14 the best guess that I could come up with.

15 THE COURT: Is it a guess or a reconstruction
16 or what?

17 THE WITNESS: To me they are all guesses, sir.
18 It's almost impossible to judge distances when you
19 have two moving vehicles.

20 Q One moving vehicle was going diagonally across
21 the front from the left side to the right side heading for
22 the shoulder of the road, that was the Weiner car; is that
23 correct?

24 A Yes.

25 Q So that moving vehicle when it left the guard

Brown-direct

1
2 rail on its side was not moving directly to you, it was going
3 across to the shoulder on the other side on an angle; is that
4 correct?

5 A Still heading towards me.

6 Q Somewhat and also somewhat going towards the
7 other shoulder; is that correct?

8 A Yes sir.

9 Q And when it crossed the center line it was
10 still going towards the shoulder; is that somewhat towards
11 you, somewhat towards the shoulder; is that correct?

12 A Yes.

13 Q When it got into the westbound lane, your
14 lane, it was still going over towards the shoulder, partly
15 to you, partly to the shoulder; is that correct?

16 A Yes sir.

17 Q And only at the very last minute did it manage
18 to turn away from its direction towards the shoulder so that
19 it was heading to you at that point; is that correct?

20 A Yes sir.

21 Q All that other time it was coming across on
22 the aisle on a slant heading for the shoulder; is that
23 correct?

24 A There wasn't any time. It was all just quick.
25 The whole accident took place just (witness snapping fingers)

1
2 that quick.

3 Q Just like that?

4 A Yes.

5 Q Did you blow your horn at any time before this
6 accident?

7 A No, I did not.

8 Q Was it dusk, light out, dark out? What was the
9 condition of the natural light? We have had some differing
10 opinions on that. What is your opinion?

11 A The time of the accident I remember it being
12 dusk.

13 Q And did you have your bus headlights on?

14 A Yes sir, I did.

15 Q Did the Weiner car have her headlights on?

16 A I don't believe so.

17 Q By the way, shortly after this accident, within
18 either the same day or the next day, did representatives of
19 the Greyhound Company come down to the scene of the accident
20 or to the accident or to the police station or anywhere
21 around there?

22 A Yes sir.

23 Q And do you know the name of any of these
24 representatives of the Greyhound Company that came down?

25 A Yes sir.

Q What names are they?

A The Greyhound representative that came down the night of the accident, I believe his name is Mr. Krazer.

Q Could you spell that for me?

A K-r-a-z-e-r, I believe.

Q What is his designation with the Greyhound Company?

A At that time I wouldn't know, he's deceased.

Q I see. But in any event what did he do? What was his occupation with the company? Was he a bus driver? Was he a vice-president in charge of operations? What was his title?

MR. LEVITT: I respectfully object unless counsel indicates that this man knew it to his own knowledge.

THE COURT: Do you know who he was, or he said he was from Greyhound or what? Did you know the man?

THE WITNESS: No sir. I really didn't know him personally.

THE COURT: You'd never seen him before.

THE WITNESS: No sir.

THE COURT: So he said he was from Greyhound and his name was --

THE WITNESS: I was told --

Brown-direct

1
2 THE COURT: Somebody else told you?

3 THE WITNESS: That this gentleman was down
4 there the night of the accident.

5 Q Who told you that?

6 A Another Greyhound representative.

7 Q Who was that Greyhound representative?

8 MR. CAMERON: I'll object to this line of
9 questioning. I don't the probative value.

10 THE COURT: I don't think it makes any difference
11 at this time.

12 MR. SPATT: If your Honor bears with me I
13 think it has some probative value.

14 THE COURT: Let's hurry along.

15 Q Who was the other man from Greyhound?

16 A Mr. Robert Kranick.

17 Q How do you spell that one?

18 A I'm not sure of the correct spelling.

19 Q Did you see him?

20 A I seen him the next day in the hospital.

21 Q And what is his designation with the Greyhound
22 Company?

23 A At that time I believe he was the Assistant
24 Terminal Manager.

25 Q Do you know if you spoke to Sergeant Stannat

Brown-direct

1
2 the next day that he came down to the scene of the accident?

3 MR. LEVITT: Of his own knowledge.

4 Q Yes.

5 A I don't know.

6 Q How about Mr. Krazer, did he speak to Sergeant
7 Stannat at all?

8 A I don't know that either, sir.

9 Q Did you attempt to reduce the speed of your bus
10 as hard as you could with all of your might?

11 A I don't think that's a very fair question.

12 Q All right, I'll withdraw it. I'll rephrase it.
13 When you saw danger ahead on the road, did you reduce the
14 speed of your bus gradually, moderately or extremely hard?

15 A I would say immediately.

16 Q That's one I didn't use.

17 A I applied the brakes firmly. I didn't jam them.
18 I applied them firmly.

19 Q So that you did not, I assume because of the
20 weather --

21 A That's correct.

22 Q Apply the brakes as hard as you could; is that
23 correct?

24 A Yes sir, I wouldn't have done it.

25 Q You could have but chose not to?

Brown-direct

1
2 A Not I couldn't have.

3 Q You couldn't have because of the weather?

4 A Because of the condition of the road at the
5 time.

6 Q As a matter of fact what you did you "Dropped
7 the seat of your vehicle" isn't that what you said at the
8 Motor Vehicle "I dropped the seat of my vehicle"?

9 A That's what you have there, I said it.

10 Q That's right.

11 Now, would you describe for the Court and jury
12 what kind of impact this was between your vehicle and the
13 Weiner car?

14 A It was great.

15 Q As a result of this impact your bus was pushed
16 back; is that correct?

17 A It's only what I was told. They took me
18 immediately to the hospital.

19 Q Well, Mr. Brown, they couldn't be too immediately
20 because you are in the picture there that was taken about an
21 hour or more after the accident. You are in the picture
22 aren't you?

23 A I wasn't sitting in that bus for an hour.

24 Q How long were you sitting in the bus?

25 A Right now I wouldn't remember.

1
2 Q You were injured, were you not?

3 A Yes sir.

4 Q Now, as a result of the impact, would you tell
5 this Court and jury whether your bus stopped short, kept going
6 or was pushed back?

7 A Upon impact I was almost stopped, that's all I
8 remember.

9 Q Were you knocked unconscious?

10 A No sir.

11 Q I'm saying not that you were almost stopped at,
12 just before, at the point of impact -- I'm not asking you
13 that. I am asking you as a result of the impact did your
14 bus continue to go forward? Did it go to the back, to the
15 side? Did it move or did it stop dead where it was?

16 A As far as I remember the bus stopped. It did
17 not continue forward.

18 Q May I just once more direct your attention to
19 your report where there is a printed place which says "Location
20 on roadway at impact" and the next place says "Distance
21 traveled after impact".

22 THE COURT: Does it say in which direction.

23 MR. SPATT: Yes. I got everything here.

24 MR. LEVITT: Will counsel concede I gave that
25 to him?

Brown direct

MR. SPATT: Most gratefully.

MR. LEVITT: It's a pleasure to help.

Q It says "Location on the roadway at impact, distance traveled after impact, length of skid marks for the bus." Will you please read what's on that report starting on "Location on roadway at impact" then the "Distance traveled after impact" then the "skid marks." Will you read that for the jury, please?

A Location at roadway at impact, half shoulder, half traveling lane -- half shoulder, half driving lane in the westbound lane. Distance traveled after impact: Pushed back six to eight feet. Length of skid marks: None.

Q Well, whoever filled that report out put it down that your bus was pushed back six to eight feet; is that correct?

A Yes sir.

Q And you signed that report?

A I did.

Q I guess you can't, according to your testimony, you remember not being pushed back; is that correct; so I can't ask you which way you were pushed back, the right to the left or straight back -- I'll withdraw that. Was your bus by the force of the impact, and I ask you this directly, pushed back and to your right close to the guard rail?

1
2 A I couldn't answer that.

3 Q Would you take a look at Plaintiff's Exhibit 1A
4 in evidence --

5 May I approach the witness, your Honor.

6 THE COURT: Yes.

7 Q This is 1A and --

8 MR. CAMERON: May we see the pictures so we
9 can see what he's referring to.

10 THE COURT: Counsel want to come up here.

11 (Continued on next page)
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LH

2 MR. SPATT: I'm talking about Plaintiff's 1A
3 which shows a close-up of the bus, of the front of
4 the bus. Will you take a look at that picture. Do
5 you see the left front wheel of the bus turned in,
6 turned to your right as if you were driving west, the
7 front left wheel is turned to the right.

8 THE COURT: So as to turn the bus to the right.

9 Q Or closer to the guard rail, do you see that?

10 A Yes sir.

11 Q Would it be fair to say if that front left
12 wheel was turned to the right so was the front right wheel,
13 they were together?

14 A Yes sir.

15 Q Can I ask you this, Mr. Brown? You had some
16 four years of experience driving a bus; is that correct be-
17 fore the facts?

18 A Yes sir.

19 Q Could you give us an estimate of how soon
20 before, in feet, before the impact that you turned that
21 wheel to the right like that?

22 A No sir, I couldn't.

23 Q Well, would it be fair to say, it must have
24 been just before the impact?

25 MR. LEVITT: I respectfully object to that.

Brown-direct

He was asked did you say and he said no.

THE COURT: You are asking him to draw an inference from the position of the wheel shown in the photograph which is a question which really has no foundation.

Q Let me ask you one last question, Mr. Brown. At the time of this collision, at the time of this collision how far was the left side of your bus from the center line of the roadway.

THE COURT: How far --

Q That would be the side closer to the center line, how far from the point of impact of collision was the left side of your bus from the center line of the roadway?

A I would say approximately four feet.

Q Page 13, of the examination before trial testified to in this court on August 3, 1972.

"Question: How far was the left side of your bus at the time of the collision from the center of the roadway?

"Answer: Approximately one foot to the right on my side."

Did you answer that in August of 1973 under oath, Mr. Brown; yes or no, please.

A Yes sir.

Q And if your bus was one foot to the right at the

1
2 time of this collision, would your bus be entirely on the
3 travel portion of the road at the time of the collision?

4 A Will you ask that again.

5 Q Your bus was one foot from the center line as
6 you testified to in August of 1972. Would your bus be on
7 the travel portion of the roadway at the time of the collision?

8 A It wasn't.

9 Q Would it be if you were one foot from the
10 center line?

11 MR. LEVITT: Objected to. The mathematics of
12 the situation --

13 THE COURT: I think you're just --

14 MR. SPATT: No further questions.

15 (Whereupon a recess was had.)

16 (After recess.)

17 THE COURT: All right, Mr. Zawacki.

18 CROSS-EXAMINATION

19 BY MR. ZAWACKI:

20 Q Mr. Brown, do you know who I represent in the
21 case?

22 A Yes.

23 Q You heard the opening statements here?

24 A Yes sir.

25 Q Now, when you spoke to your lawyer,

1
2 Mr. Levitt, you spoke about questions you would be asked?

3 A Yes sir.

4 Q What answers you would give?

5 A Not what I would give.

6 Q Generally what happened?

7 A I used my own language.

8 Q But Mr. Levitt suggested some of the questions
9 you would be asked?

10 A Yes sir.

11 Q Now, the term skidding came up, the term skid?

12 A Yes sir.

13 Q Do you know the significance of a skid in this
14 case, what it means to the case?

15 A I don't think so.

16 Q Now, when you discussed it with your lawyer,
17 talking about skid -- did he ask you whether or not the
18 Weiner vehicle skidded?

19 A He could have, yes.

20 Q What was your answer to Mr. Levitt about whether
21 that vehicle skidded or not?

22 A I don't believe that the car did skid.

23 Q This report you didn't fill that accident
24 report out, did you when you signed it?

25 A Yes.

1

2

Q After reading it?

3

A Yes sir.

4

Q You were in the hospital?

5

A Yes sir.

6

Q Mr. Krannick came to the hospital?

7

A Yes sir.

8

Q He had already been to see the police?

9

A I believe so.

10

Q He filled this out and you read it. You spent

11

some time with each other; is that right?

12

A Until the completion of it.

13

Q Do you remember the police officer's testimony,

14

the sergeant's testimony?

15

A No sir.

16

Q You weren't here for that?

17

A No sir.

18

Q Do you know what a skid is, s-k-i-d. When we

19

talk about skid?

20

A Generally speaking.

21

Q When you say generally speaking, let's be

22

specific and particular, let's see if a skid means to you

23

what it means to me, a car sliding. I don't care what it's

24

sliding on, that's the connotation it has to me?

25

A Yes, one form of it. There is all types of

1
2 it. There is all types of skidding.

3 Q All right. A car sliding. That's one form?

4 A Yes.

5 Q We agree a car sliding is a skid?

6 A Yes.

7 Q When you were asked that question by Mr. Spatt
8 you said, I think you said the Weiner car did not skid to
9 the best of your ability. Do you recall that answer?

10 A That's correct.

11 Q What does that mean to the best of your ability?
12 Is that to the best of your ability recalling today what
13 happened back then?

14 A Yes sir.

15 Q Now, two days after the accident when Mr. Krannick
16 came to see you, did you indicate then that the Weiner vehicle
17 did in fact skid?

18 A I couldn't remember back that far but I don't
19 believe so; no.

20 Q There is a place on this accident report of
21 Greyhound headed "Vehicle movement" is that right?

22 A Could I see a copy?

23 Q My question was, Mr. Brown, is there a place on
24 the accident report filled out two days after the accident
25 headed "Vehicle movement"?

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2

A Yes, one day after the accident.

3

Q And you indicated that my client, the Weiner's

4

car was on the wrong side; is that right?

5

A Yes sir.

6

Q And there is ten or twelve choices that you

7

could make as to what the car was doing, jackknife, wrong

8

side, backing, overtaking, weaving. You have a lot of choices,

9

haven't you?

10

A Yes.

11

Q And if none of those choices apply there is

12

even a blank at the bottom where you could fill in the word

13

that you want to us .

14

A It shows it here.

15

Q Was the blank filled out?

16

A No sir.

17

Q Was skidding checked under the heading "Vehicle

18

movement" for my client's vehicle?

19

A Yes sir.

20

Q Did you sign that?

21

A I signed the report.

22

Q After you read it?

23

A Yes.

24

Q And your ability, to the best of your ability,

25

your ability to recall this accident was better the day after

1
2 the accident than it is right now, isn't it, Mr. Brown?

3 A Not at the time this was filled, no. At the
4 time this was filled out I was under sedation. I was also
5 in a lot of pain and I cannot recall the exact questions that
6 were asked me at the time this was being filled out.

7 Q Did you have any injury to your head?

8 A No sir.

9 Q Since the accident have you seen this report?

10 A I had the opportunity to see it in its entirety
11 today; yes.

12 Q You mean from the time you were in the hospital
13 up until today you never saw the report at all?

14 A I've seen the report but I've never read it
15 in its entirety.

16 Q When you came back to work after being out of
17 work for awhile, I assume you were after the accident?

18 A Yes.

19 Q Forget about coming back. When you first went
20 back to Greyhound Office for any purpose to say hello, to
21 visit or report, didn't you see the report then?

22 A Absolutely not.

23 Q You saw it in the hospital?

24 A That was the last time.

25 Q Are you saying that skidding is wrong?

1
2 A I am saying that the time that this was filled
3 out that there is no blank in there for out of control, and
4 apparently at the time that this was filled in this was the
5 closest thing that we could get to it.

6 Q Are you telling me what you recall? This is
7 something that you recall?

8 A Apparently it is.

9 Q So this business of your being under sedation
10 or in pain, you recall the sedation or this pain doesn't
11 impair your ability to recall that at the time this was
12 filled out you were in the hospital. The facts were as
13 follows. There was no heading or check-off "Out of control"
14 so skidding was the nearest thing.

15 MR. LEVITT: I object to that as repetitious.

16 THE COURT: He's just trying to make sure that
17 that is the answer that Mr. Brown intended to give.
18 He may so inquire.

19 A I don't recall this. I don't recall the form
20 of questions that were put to me in the hospital due to the
21 fact that I was in pain and due to the fact that I was under
22 sedation. A lot of this stuff was filled out for me under
23 my direction but the formal questioning to this I could not --

24 Q We do know this, Mr. Brown, that this was filled
25 out. This report was filled out while Mr. Krannick was visiting

1
2 you at the hospital?

3 A That's correct.

4 Q Questions were put to you, you gave the answers?

5 A That's right.

6 Q Now, this business about there being no alternative
7 let's say on there "Car out of control" is this an assumption
8 on your part or reconstruction or trying to explain it to
9 us in the courthouse here. I could see there is no blank
10 "Out of control" here, no question about it.

11 A Are you asking if this is an assumption?

12 Q An assumption made now years later for the
13 reason you put down as skidding?

14 A I don't believe so.

15 Q You believe that's truly what happened?

16 A The car skidded.

17 Q Let's start again. I want to know which is it
18 now? You told us something about being under sedation and
19 being in pain on one hand?

20 A That's true.

21 Q On the other hand you say there was no blank
22 here "Out of control." Which was it that caused the word
23 skidded to be checked off, your sedation, in pain or the fact
24 that there was no blank "Out of control" for you to check?

25 A I come to this assumption today. That's the

1
2 only thing I can say.

3 Q That's your assumption today?

4 A At that time, I don't know.

5 Q Because we have a blank space where you could
6 fill in any word you wanted nothing prevented you from telling
7 Mr. Krannick the car was out of control and putting those
8 words in, out of control.

9 A Apparently I didn't say it.

10 Q And after you gave him the information he checked
11 off the various blanks, etc. in this report? It was given
12 to you to read before you signed it, wasn't it?

13 A Yes.

14 Q Let me ask you this, did not the Weiner vehicle
15 leave skid marks of 104 feet from the place where it originally
16 hit the right side of the road, came across the road, no
17 question about that; came across the road -- that's this
18 collision with your bus but at 104 feet, that's what the
19 police officer said it was. It did not leave a skid mark
20 going across the entire road?

21 A I don't know, sir.

22 Q The heading on this accident report --

23 THE COURT: Do you want to help locate that?

24 THE WITNESS: I don't see it.

25 Q Can you make that out or do you want the original

1
2 report.

3 THE COURT: You see where it says "Length of
4 skid marks, then it says bus none. What is the
5 expression identifying the other vehicle.

6 Q Other vehicle. You told us your bus didn't
7 skid; is that right?

8 A Yes.

9 Q This accident report says "Bus, length of skid
10 mark none" is that right?

11 A Yes.

12 Q That information is correct?

13 A Yes.

14 Q Other vehicle length of skid mark. What is the
15 answer?

16 A It says 104 feet.

17 Q Isn't that the fact?

18 A I wouldn't know. I wouldn't have had this
19 information at the time.

20 Q You wouldn't have had what information?

21 A This 104 feet, I wouldn't have had this informa-
22 tion.

23 Q You mean the precise amount of feet? You weren't
24 there when the police officer measured?

25 A That's right.

1
2 Q You would have information whatever that footage
3 was -- I agree with you solely, you didn't know the exact
4 amount of footage?

5 A Right.

6 Q You knew the vehicle came across from one side
7 of the road to the other side, to your side?

8 A Yes sir.

9 Q And you watched that car, you watched its
10 movement. You told Mr. Spatt that. You watched the car the
11 whole distance?

12 A Yes.

13 Q You would have knowledge a day after the
14 accident whether that car drove across the road or whether
15 it skidded; is that right?

16 A I would say so.

17 Q And when you read and signed this report you
18 made no change in that portion of it, did you?

19 A I haven't changed anything on this.

20 Q There were some changes made in this report?

21 A I didn't.

22 Q You see some crossing out right at the 104 feet,
23 something was there in that box?

24 A Something was crossed out.

25 Q Do you know what it was? Do you see the original?

361

Brown-cross

1
2 Can you make it out?

3 THE COURT: Is it measurable?

4 MR. ZAWACKI: 15 feet, 7 feet, 5 feet, that's
5 what we think it is.

6 Q Under the heading again "Length of skid mark
7 for the other vehicle", didn't Mr. Krannick discuss
8 that with you, the footage, five feet, ten feet, seven
9 feet?

10 A I don't believe so.

11 Q Let me ask you now, you read the report. You
12 have been asked some questions about this case. Do you still
13 insist that the Weiner car did not skid?

14 THE COURT: Putting your memory back to the
15 event, is that what you mean, Mr. Zawacki?

16 MR. ZAWACKI: I better withdraw the question
17 and try it the other way.

18 Q Mr. Brown, I don't want you to agree with
19 anything that I say if it's not the fact. If I say something
20 that's not right you tell me. What I want to know right now
21 up there on the witness stand under oath, with all these
22 people, I want to know, can you tell us now that the Weiner
23 car did not skid or that it definitely did skid, or that at
24 this time you are unable to answer that question? I'm giving
25 you three alternatives. If you don't like either of those

1
2 tell me?

3 A I've made the statement that the car to the
4 best of my ability did not skid and this is my answer.

5 Q "It's the best of my ability" that bothers me.
6 I don't want a guess. I don't want your guess and I don't
7 want your reconstruction. I want to know what you saw sitting
8 up in that bus driver's seat on the day of the accident seeing
9 this car come across the road. Was it skidding or was it
10 not skidding or don't you know.

11 MR. SPATT: I object to that your Honor. He
12 just answered that fully and completely.

13 THE COURT: I think Mr. Zawacki wants to make
14 sure that he understood the question.

15 THE WITNESS: To the best of my ability I don't
16 think it skidded unless we are disagreeing on skidding
17 again.

18 THE COURT: I think Mr. Zawacki wants to eliminate
19 that. He wants your definite recollection, if you have
20 one, because he's very insistent on that. If you
21 can't recall he wants you to say that, but if you do
22 have a picture of the thing in your mind that you can
23 put yourself back to. He wants to know now, can you
24 say that it didn't skid or that it did skid, and which
25 do you say, or do you say I can't recall; is that it

1
2 Mr. Zawacki?

3 MR. ZAWACKI: Precisely.

4 THE COURT: I suppose there is a fourth
5 alternative; one couldn't tell at the time.

6 THE WITNESS: I couldn't give you a definite
7 answer.

8 O I appreciate your being candid this way. As
9 far as light conditions, you don't know if the Weiner's had
10 their lights on?

11 A I don't believe so.

12 O When this accident report was filled out, you
13 reported the weather was clear and the light was daylight,
14 not dusk; is that right? Did you report it as daylight with
15 the weather clear?

16 A Daylight.

17 O Is that the fact?

18 A I remember it as being dusk.

19 (Continued on next page)
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Q When you read the report, did you change it around? Did you make any corrections there? There is an alternative, daylight, dark, dusk. You made no change?

A No sir.

Q You are not telling this jury that Weiner's should have had their lights on, are you?

A No, the situation didn't warrant headlights.

Q Let me talk about the speed of the Weiner vehicle. You said before in answer to a question by Mr. Spatt, you used the word "fast". I thought you were trying to convey the impression that the accident happened very fast not that the Weiner vehicle was going very fast.

MR. SPATT: I object to the form of that question.

THE COURT: No, he may ask the question in that form.

Q Do you recall that Mr. Brown?

A I don't recall saying anything about the speed of the Weiner vehicle.

Q What was the speed of the Weiner vehicle as it approached the spot where it hit the snow bank or the guard rail on the right side?

A I have no idea.

Q What was the speed of the Weiner vehicle as it

1
2 came across the road?

3 A I have no idea.

4 Q Now, there is no question, is there, Mr. Brown,
5 that at the time the accident happened the road was wet and
6 slushy; is that right?

7 A That's right.

8 Q And you used those words at the Motor Vehicle
9 Hearing Accident Report?

10 A That's right.

11 Q We know off the travel portion of the roadway
12 on the shoulder there was some big snow banks there; is that
13 right?

14 A It was snow banks.

15 Q Let's forget those. Wasn't there also some
16 slush both on the shoulder and on part of the travel portion
17 of the highway, part of the paved portion of the highway?

18 A Could you ask that again?

19 Q Wasn't there slush on parts of the paved portion
20 of the highway as well as slush on the shoulder?

21 A I would say so, yes.

22 Q And we agree what slush is, it's heavy, wet
23 snow, isn't that right?

24 A That's right.

25 Q Was there slush in the vicinity where the Wein

Brown-cross

1
2 car first left the road on the roadway?

3 A First sight.

4 Q Over to the right?

5 A Yes.

6 Q You heard Mr. Stone the driver of the Volkswagen,
7 you heard him testify about this case, have you not?

8 A If you mean this afternoon -- the deposition.

9 Q You were there when he testified in person at
10 the deposition?

11 A No, I wasn't. I don't remember.

12 Q I think you were. It doesn't make any difference
13 Didn't he come to that Motor Vehicle Hearing with the referee,
14 wasn't he there?

15 A Yes.

16 Q You were there?

17 A Yes.

18 Q Do you know the effect of a wheel going into
19 that heavy slush -- I'll withdraw that.

20 You have driven many miles, Mr. Brown?

21 A Quite a few.

22 Q You know what happens when a wheel gets caught
23 in heavy slush such as existed on this road?

24 A Automobile you wouldn't notice it.

25 Q What happens in a bus you wouldn't notice it --

1
2 what happens in an automobile?

3 A Depending on how deep the slush is and the
4 temperature at the time.

5 Q The kind of slush that existed on this roadway
6 just before this accident, this was heavy slush, what happens
7 when an automobile wheel gets caught --

8 MR. SPATT: I object to the form of the question.
9 I think it's speculative.

10 THE COURT: No, he may answer. Let's see what
11 the answer is.

12 Q Did you say you don't know, Mr. Brown.

13 A I said I wouldn't know.

14 Q You don't know?

15 A As far as an automobile?

16 Q You say the automobile wouldn't be drawn in
17 the direction of that slush?

18 MR. LEVITT: I object to that, it depends on
19 many factors which is not in being.

20 THE COURT: Mr. Zawacki, isn't this a question
21 which draws on an experience so general that we are
22 all able or equally unable to answer it?

23 MR. ZAWACKI: I withdraw the question, your
24 Honor.

25 Q Have you ever heard Bart Stone, the driver

of the Volkswagen say that the Weiners got caught in the slush? Have you ever heard that?

A I believe I did.

Q Do you know what he meant when he said that?

A No.

Q The day of the accident, just before the Weiner car left the road, did you see it get caught in the slush?

A No sir.

Q You just saw it go to the right?

A I seen the car go to the right.

Q Were the wheels turned to the right, the front wheels, do you know what I mean by that; were the wheels turned?

A I wouldn't know.

Q Did it skid to the right?

A Again I wouldn't know.

MR. ZAWACKI: I have no further questions.

MR. CAMERON: I have just one or two questions.

THE COURT: Are you really going to have one or two -- I think a couple of jurors can catch that train, if you don't mind Mr. Cameron. All right, 10:00 o'clock tomorrow morning. Do not discuss the case with one another or anyone on the jury until it's finally given to you to decide. Goodnight.

(Whereupon court recessed for the day.)